

105TH CONGRESS
1ST SESSION

S. 1530

To resolve ongoing tobacco litigation, to reform the civil justice system responsible for adjudicating tort claims against companies that manufacturer tobacco products, and establish a national tobacco policy for the United States that will decrease youth tobacco use and reduce the marketing of tobacco products to young Americans.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 1997

Mr. HATCH introduced the following bill; which was read the first time

A BILL

To resolve ongoing tobacco litigation, to reform the civil justice system responsible for adjudicating tort claims against companies that manufacturer tobacco products, and establish a national tobacco policy for the United States that will decrease youth tobacco use and reduce the marketing of tobacco products to young Americans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Placing Restraints on Tobacco’s Endangerment of Chil-
6 dren and Teens Act” or the “PROTECT Act”.

- 1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Goals and purposes.
 Sec. 4. National goals for the reduction in underage tobacco use.
 Sec. 5. Definitions.

TITLE I—NATIONAL TOBACCO SETTLEMENT TRUST FUND

- Sec. 101. Establishment of Trust Fund.
 Sec. 102. Licensing fees payment schedule.
 Sec. 103. Enforcement.

TITLE II—NATIONAL PROTOCOL AND LIABILITY PROVISIONS

Subtitle A—National Tobacco Control Protocol

CHAPTER 1—ESTABLISHMENT

- Sec. 201. Requirement.

CHAPTER 2—TERMS AND CONDITIONS

SUBCHAPTER A—PROTOCOL RESTRICTIONS ON ADVERTISING

- Sec. 211. Application of subchapter.
 Sec. 212. Agreement to prohibit certain advertising.
 Sec. 213. Consensual restrictions.
 Sec. 214. Agreement on format and content requirements for labeling and advertising.
 Sec. 215. Agreement to ban on nontobacco items and services, contests and games of chance, and sponsorship of events.

SUBCHAPTER B—PROVISIONS RELATING TO LOBBYING

- Sec. 220. Application of subchapter.
 Sec. 221. Agreement to provisions relating to lobbying.
 Sec. 222. Agreement to terminate certain entities.

SUBCHAPTER C—OTHER PROVISIONS

- Sec. 225. Application of subchapter.
 Sec. 226. Determination of licensing fee amount.
 Sec. 227. Attorney's fees and expenses.
 Sec. 228. Limitations with respect to Indian country.

CHAPTER 3—ENFORCEMENT

- Sec. 231. Federal enforcement of the protocol.
 Sec. 232. State enforcement of the protocol.
 Sec. 233. Private enforcement of protocol.
 Sec. 234. Removal.

Subtitle B—Consent Decrees

- Sec. 241. Consent decrees.

- Sec. 242. State enforcement of consent decrees.
- Sec. 243. Non-participating manufacturers.

Subtitle C—Liability Provisions

CHAPTER 1—GENERAL PROVISIONS

- Sec. 251. Definitions.

CHAPTER 2—IMMUNITY AND LIABILITY FOR PAST CONDUCT

- Sec. 255. Application of chapter.
- Sec. 256. General immunity.
- Sec. 257. Civil liability for past conduct.
- Sec. 258. Civil liability for future conduct.
- Sec. 259. Non-participating manufacturers.
- Sec. 260. Payment of judgments and settlements.
- Sec. 261. State eligibility.
- Sec. 262. Removal.
- Sec. 263. Conforming amendments.

TITLE III—REDUCTION IN UNDERAGE TOBACCO USE

Subtitle A—State Laws Regarding the Sale of Tobacco Products to Minors

- Sec. 300. Short title.
- Sec. 301. State laws regarding sale of tobacco products to individuals under the age of 18.
- Sec. 302. Model State law.

Subtitle B—Required Reduction in Underage Usage

- Sec. 311. Purpose.
- Sec. 312. Determination of underage use base percentages.
- Sec. 313. Annual daily incidence of underage use of tobacco products.
- Sec. 314. Required reduction in underage tobacco use.
- Sec. 315. Application of surcharges.
- Sec. 316. Abatement procedures.
- Sec. 317. Incentive for exceeding reduction goals.

TITLE IV—HEALTH AND SAFETY REGULATION OF TOBACCO PRODUCTS

- Sec. 401. Health and safety regulation of tobacco products.

“CHAPTER IX—HEALTH PROMOTION AND DISEASE PREVENTION PROGRAM FOR TOBACCO PRODUCTS

- “Sec. 900. Definitions.

“SUBCHAPTER A—TOBACCO PRODUCT REGULATION

- “Sec. 901. Statement of general duties.
- “Sec. 902. Tobacco product health risk management standards.
- “Sec. 903. Good manufacturing practice standards.
- “Sec. 904. Tobacco product labeling, warning, and packaging standards.
- “Sec. 905. Reduced risk tobacco products.
- “Sec. 906. Tobacco product marketing provisions.
- “Sec. 907. Tobacco Products Scientific Advisory Committee.

- “Sec. 908. Reports.
- “Sec. 909. Judicial review.
- “Sec. 910. Preemption.
- Sec. 402. Technical provisions.
- Sec. 403. Federal licensing of military and other entities.

TITLE V—PAYMENTS TO STATES AND PUBLIC HEALTH PROGRAMS

Subtitle A—Payments to States

- Sec. 501. Reimbursement for State expenditures.
- Sec. 502. Requirement for State use of certain funds.

Subtitle B—Public Health Programs

- Sec. 521. National Institutes of Health Trust Fund for Health Research.
- Sec. 522. National anti-tobacco product consumption and tobacco product cessation public health program.

TITLE VI—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

- Sec. 601. Definitions.
- Sec. 602. Smoke-free environment policy.
- Sec. 603. Preemption.
- Sec. 604. Regulations.
- Sec. 605. Effective date.

TITLE VII—PUBLIC DISCLOSURE OF HEALTH RESEARCH

- Sec. 701. Purpose.
- Sec. 702. National tobacco document depository.
- Sec. 703. Enforcement.

TITLE VIII—AGRICULTURAL TRANSITION PROVISIONS

- Sec. 801. Short title.
- Sec. 802. Purposes.
- Sec. 803. Definitions.

SUBTITLE A—TOBACCO PRODUCTION TRANSITION

CHAPTER 1—TOBACCO TRANSITION CONTRACTS

- Sec. 811. Tobacco Transition Account.
- Sec. 812. Offer and terms of tobacco transition contracts.
- Sec. 813. Elements of contracts.
- Sec. 814. Buyout payments to owners.
- Sec. 815. Transition payments to producers.
- Sec. 816. Tobacco worker transition program.
- Sec. 817. Farmer opportunity grants.

CHAPTER 2—RURAL ECONOMIC ASSISTANCE BLOCK GRANTS

- Sec. 821. Rural economic assistance block grants.

SUBTITLE B—TOBACCO PRICE SUPPORT AND PRODUCTION ADJUSTMENT PROGRAMS

CHAPTER 1—TOBACCO PRICE SUPPORT PROGRAM

- Sec. 831. Interim reform of tobacco price support program.
 Sec. 832. Termination of tobacco price support program.

CHAPTER 2—TOBACCO PRODUCTION ADJUSTMENT PROGRAMS

- Sec. 835. Termination of tobacco production adjustment programs.

SUBTITLE C—FUNDING

- Sec. 841. Trust Fund.
 Sec. 842. Commodity Credit Corporation.

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Provisions relating to Native Americans.
 Sec. 902. Whistleblower protections.
 Sec. 903. Limited antitrust exemption.
 Sec. 904. Pass-through.
 Sec. 905. Effective date.

1 **SEC. 2. FINDINGS.**

2 (a) **GENERAL FINDINGS.**—Congress makes the fol-
 3 lowing findings:

4 (1) Tobacco is an addictive substance the use of
 5 which constitutes the Nation's number 1 preventable
 6 cause of death.

7 (2) The use of tobacco products by the nation's
 8 children is a serious and growing public health prob-
 9 lem that results in new generations of tobacco-de-
 10 pendent children and adults.

11 (3) There is a consensus within the scientific
 12 and medical communities that currently marketed
 13 tobacco products are inherently unsafe and cause
 14 cancer, heart disease, and other serious adverse
 15 health effects. The tobacco industry concealed rel-

1 evant data concerning the effects of tobacco prod-
2 ucts on adolescents and adults.

3 (4) Virtually all new users of tobacco products
4 are under the age of 18. Tobacco industry advertis-
5 ing and marketing is directed at adolescents and as
6 such, sweeping new restriction on the sale, pro-
7 motion, and distribution of such products are need-
8 ed.

9 (5) Enhancing the existing legal mechanisms
10 and the available prevention, research, and treat-
11 ment resources with respect to tobacco will allow our
12 Nation to address more effectively the problems as-
13 sociated with the use of tobacco products.

14 (6) Public health authorities believe that the so-
15 cietal benefits of enacting tobacco settlement legisla-
16 tion in human and economic terms would be vast.
17 The Secretary of Health and Human Services has
18 found that reducing underage tobacco use 50 per-
19 cent “would prevent well over 60,000 early deaths”.
20 The Secretary has estimated that the monetary
21 value of the regulations promulgated as a result of
22 this Act will be an estimated \$43,000,000,000 per
23 year in reduced medical costs, improved productivity,
24 and the benefit of avoiding the premature death of
25 loved ones.

1 (7) The unique position occupied by tobacco in
2 the history and economy of the United States, the
3 magnitude of the actual and potential tobacco-relat-
4 ed litigation, the advisability of avoiding the cost, ex-
5 pense, uncertainty, and inconsistency associated with
6 such protracted litigation, the need to limit the sale,
7 distribution, marketing, and advertising of tobacco
8 products to persons of legal age, and the need to
9 better educate the public (especially young people)
10 concerning the health risks of using tobacco prod-
11 ucts make it in the public interest to enact legisla-
12 tion to facilitate a comprehensive resolution of such
13 matters.

14 (b) FINDINGS RELATED TO INTERSTATE COMMERCE
15 AND THE JUDICIAL SYSTEM.—Congress makes the follow-
16 ing findings:

17 (1) The sale, distribution, marketing, advertis-
18 ing, and use of tobacco products are activities sub-
19 stantially affecting interstate commerce and as such,
20 have a substantial effect on the economy of the
21 United States.

22 (2) The sale, distribution, marketing, advertis-
23 ing, and use of tobacco products are activities that
24 substantially affect interstate commerce by virtue of
25 the health care-related and other costs that Federal

1 and State governmental authorities have incurred
2 because of the usage of tobacco products.

3 (3) Various civil actions brought by State attor-
4 neys general, cities, counties, the Commonwealth of
5 Puerto Rico, third-party payors, and other private
6 classes and individuals to recover damages relating
7 to tobacco-related diseases, conditions and products
8 are pending throughout the United States; of these
9 actions are slow-moving, expensive, and burdensome
10 not only for the litigants but also for Federal and
11 State judicial systems.

12 **SEC. 3. GOALS AND PURPOSES.**

13 (a) GOALS.—It is a goal of this Act to—

14 (1) decrease youth smoking and reduce the
15 marketing of tobacco products to young Americans;

16 (2) decrease tobacco use by all Americans by
17 encouraging public education and smoking cessation
18 programs and to decrease the exposure of individuals
19 to environmental (second-hand) smoke;

20 (3) enhance biomedical research efforts into dis-
21 eases associated with tobacco use;

22 (4) advance our knowledge about the health ef-
23 fects of nicotine and tobacco on the human body;

1 (5) provide transition assistance to tobacco
2 farmers and create incentives to reduce the produc-
3 tion and distribution of tobacco products;

4 (6) return to the States funds that they have
5 expended with respect to tobacco-related health care
6 costs and other costs related to tobacco;

7 (7) establish the authority of the Food and
8 Drug Administration with respect to the types of to-
9 bacco products that may be lawfully sold;

10 (8) reform tobacco litigation practices to bring
11 finality to current litigation and provide greater pre-
12 dictability in future individual cases; and

13 (9) wisely invest increased tobacco revenues in
14 important public health priorities, such as smoking
15 cessation, public education, counter-advertising.

16 (b) PURPOSES.—It is the purpose of this Act to—

17 (1) provide for the funding by the tobacco in-
18 dustry of an aggressive Federal enforcement pro-
19 gram relating to tobacco advertising and distribu-
20 tion, including a State-administered retail licensing
21 system to prevent minors from obtaining tobacco
22 products;

23 (2) subject the tobacco industry to severe finan-
24 cial penalties in the event that underage tobacco

1 usage does not decline radically over the next 10
2 years;

3 (3) provide for the establishment of national
4 standards to control the manufacturing of tobacco
5 products and the ingredients used in such products;

6 (4) provide certain regulatory powers to the
7 Secretary of Health and Human Services to encour-
8 age the development and marketing by the tobacco
9 industry of “less hazardous tobacco products”, in-
10 cluding the power to regulate the level of nicotine in
11 such products;

12 (5) require the manufacturers of tobacco prod-
13 ucts to disclose all present and future non-public in-
14 ternal laboratory research regarding tobacco prod-
15 ucts;

16 (6) establish a minimum Federal standard to
17 limit smoking in public places, including the halls of
18 Congress;

19 (7) provide for the establishment of a National
20 Tobacco Settlement Trust Fund to be funded by the
21 tobacco industry and used in accordance with this
22 Act;

23 (8) provide for the establishment of a national
24 education-oriented counter advertising and tobacco

1 use prevention campaign to be funded through the
2 National Tobacco Settlement Trust Fund;

3 (9) provide annual payments to States to fund
4 tobacco-related health benefits programs through the
5 National Tobacco Settlement Trust Fund; and

6 (10)(A) settle the present tobacco-related gov-
7 ernmental parens patriae and private class actions
8 as to which a final judgment or final settlement has
9 not been reached as of the effective date of this Act;

10 (B) bar future tobacco-related claims based on
11 dependency;

12 (C) preclude claims for punitive damages based
13 on conduct that took place prior to the effective date
14 of this Act to that such claims are not reduced to
15 final judgment or final settlement prior to the effec-
16 tive date of this Act; and

17 (D) preclude further class actions or aggrega-
18 tions of claims in tobacco-related actions.

19 **SEC. 4. NATIONAL GOALS FOR THE REDUCTION IN UNDER-**
20 **AGE TOBACCO USE.**

21 (a) IN GENERAL.—With respect to the average an-
22 nual incidence of the daily use of tobacco products by indi-
23 viduals who are under 18 years of age, it shall be the na-
24 tional goals of the United States that such use be reduced
25 as follows:

1 (1) CIGARETTES.—With respect to cigarettes—

2 (A) in the fifth and sixth calendar years
3 after the date of enactment of this Act the per-
4 centage decrease in the use of cigarette prod-
5 ucts shall be at least 30 percent;

6 (B) in the seventh, eighth and ninth cal-
7 endar years after the date of enactment of this
8 Act the percentage decrease in the use of ciga-
9 rette products shall be at least 50 percent; and

10 (C) in the tenth and subsequent calendar
11 years after the date of enactment of this Act
12 the percentage decrease in the use of cigarette
13 products shall be at least 60 percent.

14 (2) SMOKELESS TOBACCO PRODUCTS.—With re-
15 spect to smokeless tobacco products—

16 (A) in the fifth and sixth calendar years
17 after the date of enactment of this Act the per-
18 centage decrease in the use of smokeless to-
19 bacco products shall be at least 25 percent;

20 (B) in the seventh, eighth and ninth cal-
21 endar years after the date of enactment of this
22 Act the percentage decrease in the use of
23 smokeless tobacco products shall be at least 35
24 percent; and

1 (C) in the tenth and subsequent calendar
2 years after the date of enactment of this Act
3 the percentage decrease in the use of smokeless
4 tobacco products shall be at least 45 percent.

5 (b) DETERMINATIONS.—Determinations as to wheth-
6 er the national goals described in subsection (a) have been
7 met shall be made in accordance with the provisions of
8 subtitle B of title III.

9 **SEC. 5. DEFINITIONS.**

10 In this Act:

11 (1) BRAND.—The term “brand” means a vari-
12 ety of a tobacco product distinguished by the tobacco
13 used, tar content, nicotine content, flavoring used,
14 size, filtration, or packaging.

15 (2) CIGARETTE.—The term “cigarette” means
16 any product which contains nicotine, is intended to
17 be burned under ordinary conditions of use, and con-
18 sists of—

19 (A) any roll of tobacco wrapped in paper
20 or in any substance not containing tobacco; and

21 (B) any roll of tobacco wrapped in any
22 substance containing tobacco which, because of
23 its appearance, the type of tobacco used in the
24 filler, or its packaging and labeling, is likely to

1 be offered to, or purchased by, consumers as a
 2 cigarette described in subparagraph (A).

3 (3) CIGARETTE TOBACCO.—The term “cigarette
 4 tobacco” means any product that consists of loose
 5 tobacco that contains or delivers nicotine and is in-
 6 tended for use by persons in a cigarette. Unless oth-
 7 erwise stated, the requirements of this Act pertain-
 8 ing to cigarettes shall also apply to cigarette to-
 9 bacco.

10 (4) COMMERCE.—The term “commerce”
 11 means—

12 (A) commerce between any State, the Dis-
 13 trict of Columbia, the Commonwealth of Puerto
 14 Rico, Guam, the Virgin Islands, American
 15 Samoa, the Northern Mariana Islands or any
 16 territory or possession of the United States;

17 (B) commerce between points in any State,
 18 the District of Columbia, the Commonwealth of
 19 Puerto Rico, Guam, the Virgin Islands, Amer-
 20 ican Samoa, the Northern Mariana Islands or
 21 any territory or possession of the United States;
 22 or

23 (C) commerce wholly within the District of
 24 Columbia, Guam, the Virgin Islands, American

1 Samoa, the Northern Mariana Islands or any
2 territory or possession of the United States.

3 (5) COMMISSIONER.—The term “Commis-
4 sioner” means the Commissioner of Food and
5 Drugs.

6 (6) CONSENT DECREE.—The term “consent de-
7 cree” means a consent decree executed by the par-
8 ticipating manufacturers and a State under the pro-
9 vision of section 241.

10 (7) COURT.—The term “court” means any judi-
11 cial or agency court, forum or tribunal within the
12 United States, including without limitation any Fed-
13 eral, State, or tribal court.

14 (8) DISTRIBUTOR.—The term “distributor”
15 means any person who furthers the distribution of
16 tobacco products, whether domestic or imported, at
17 any point from the original place of manufacture to
18 the person who sells or distributes the product to in-
19 dividuals for personal consumption. Such term shall
20 not include common carriers.

21 (9) INDIAN TRIBE.—The term “Indian tribe”
22 has the same meaning given such term in section
23 4(e) of the Indian Self Determination and Education
24 Assistance Act (25 U.S.C. 450b(e)).

1 (10) TRIBAL ORGANIZATION.—The term “tribal
2 organization” has the same meaning given such
3 term in section 4 of the Indian Self Determination
4 and Education Assistance Act (25 U.S.C. 450b).

5 (11) MANUFACTURER.—The term “manufac-
6 turer” means—

7 (A) a person who directly (not through a
8 subsidiary company or affiliate) manufactures
9 tobacco products for sale in the United States;

10 (B) a successor or assign of a person de-
11 scribed in subparagraph (A);

12 (C) an entity established by a person de-
13 scribed in subparagraph (A); or

14 (D) an entity to which a person described
15 in subparagraph (A) directly or indirectly
16 makes a fraudulent conveyance after the effec-
17 tive date of this Act or a transfer that would
18 otherwise be voidable under chapter 7 of title
19 11, United States Code, but only to the extent
20 of the interest or obligation transferred.

21 Such term shall not include a parent or affiliate of
22 a person who manufactures tobacco products unless
23 such parent or affiliate itself is a person described
24 in any of subparagraphs (A) through (D).

1 (12) NICOTINE.—The term “nicotine” means
2 the chemical substance named 3-(1-Methyl-2-
3 pyrrolidiny)pyridine or $C_{10}H_{14}N_2$, including any salt
4 or complex of nicotine.

5 (13) PACKAGE.—The term “package” means a
6 pack, box, carton, or container of any kind in which
7 tobacco products are offered for sale, sold, or other-
8 wise distributed to consumers.

9 (14) PARTICIPATING MANUFACTURER.—The
10 term “participating manufacturer” means a manu-
11 facturer which, within the periods specified in the
12 applicable provisions of title II—

13 (A) enters into the Protocol; and

14 (B) enters into a consent decree with each
15 State that requests that the manufacturer enter
16 into the Protocol.

17 (15) PERSON.—The term “person” means an
18 individual, partnership, corporation, or any other
19 business or legal entity.

20 (16) POINT OF SALE.—The term “point of
21 sale” means any location at which an individual can
22 purchase or otherwise obtain tobacco products for
23 personal consumption.

24 (17) PROTOCOL.—The term “Protocol” means
25 the protocol to be executed under subtitle A of title

1 II for the purpose of setting forth certain obligations
2 being undertaken by the Attorney General, partici-
3 pating manufacturers, the chief executive officer of
4 each State, and a representative of the members of
5 the class certified for purposes of *Dianne Castano v.*
6 *American Tobacco Company*, as consideration for
7 the resolution of tobacco claims through the civil li-
8 ability provisions of title II.

9 (18) RETAILER.—The term “retailer” means
10 any person who sells tobacco products to individuals
11 for personal consumption, or who operates a facility
12 where vending machines or self-service displays are
13 permitted under this Act.

14 (19) SALE.—The term “sale” includes the sell-
15 ing, providing samples of, or otherwise making to-
16 bacco products available for personal consumption in
17 any place within the scope of this Act.

18 (20) SECRETARY.—The term “Secretary”
19 means the Secretary of Health and Human Services.

20 (21) SMOKELESS TOBACCO.—The term “smoke-
21 less tobacco” means any product that consists of
22 cut, ground, powdered, or leaf tobacco that contains
23 nicotine and that is intended to be placed in the oral
24 or nasal cavity.

1 (22) STATE.—The term “State” includes the
 2 several States, the District of Columbia, the Com-
 3 monwealth of Puerto Rico, Guam, the Virgin Is-
 4 lands, American Samoa, the Northern Mariana Is-
 5 lands, and any other territory or possession of the
 6 United States. Such term includes any political divi-
 7 sion of any State.

8 (23) TOBACCO.—The term “tobacco” means to-
 9 bacco in its unmanufactured form.

10 (24) TOBACCO CLAIM.—The term “tobacco
 11 claim” means a claim directly or indirectly arising
 12 out of, based on, or related to the health-related ef-
 13 fects or attributes of tobacco products, including a
 14 claim arising out of, based on, or related to allega-
 15 tions regarding any conduct, statement or omission
 16 concerning the health-related effects or attributes of
 17 such products, that is brought against—

18 (A) a manufacturer or the predecessors or
 19 past, present or future parents, affiliates, offi-
 20 cers, directors, employees or agents of a manu-
 21 facturer; or

22 (B) any importer, supplier, distributor,
 23 wholesaler, retailer or other seller of tobacco
 24 products or any grower of tobacco.

1 (25) TOBACCO PRODUCT.—The term “tobacco
2 product” means cigarettes, cigarette tobacco, and
3 smokeless tobacco.

4 (26) TRUST FUND.—The term “Trust Fund”
5 means the National Tobacco Settlement Trust Fund
6 established under section 101.

7 **TITLE I—NATIONAL TOBACCO**
8 **SETTLEMENT TRUST FUND**

9 **SEC. 101. ESTABLISHMENT OF TRUST FUND.**

10 (a) CREATION AND DEPOSITS.—

11 (1) IN GENERAL.—There is established in the
12 Treasury of the United States a trust fund to be
13 known as the “National Tobacco Settlement Trust
14 Fund”.

15 (2) DEPOSITS.—The Trust Fund shall be com-
16 posed of the following deposits to be paid by partici-
17 pating manufacturers under the fee payment sched-
18 ule under section 102:

19 (A) COMPENSATORY DAMAGE DEPOSITS.—

20 With respect to compensatory damages,
21 \$303,337,500,000 shall be deposited in the
22 Trust Fund and shall represent the settlement
23 amount referred to in the Protocol and the con-
24 sent decrees.

1 (B) PUNITIVE DAMAGE DEPOSITS.—With
2 respect to punitive damages, \$95,000,000,000
3 shall be deposited in the Trust Fund and shall
4 represent the settlement of tobacco-related pu-
5 nitive damages claims which occurred prior to
6 the date of enactment of this Act, and shall be
7 used to fund the Trust Fund for Health Re-
8 search under section 521.

9 (3) ACCOUNTS IN TRUST FUND.—The National
10 Tobacco Settlement Trust Fund shall consist of—

11 (A) a State Account, and

12 (B) a Federal Account.

13 Each such Account shall consist of such amounts as
14 may be transferred to it under this section or cred-
15 ited under section 103(b)(3).

16 (4) TRUSTEES.—

17 (A) IN GENERAL.—The National Tobacco
18 Settlement Trust Fund shall be administered by
19 the Attorney General who shall serve together
20 with the Secretary of the Treasury and the Sec-
21 retary of Health and Human Services as the
22 Trustees of the Fund.

23 (B) ADVISORY BOARD.—The Trustees of
24 the Trust Fund, in administering the Trust

1 Fund, shall be advised by an advisory board es-
 2 tablished under section 103.

3 (b) TRANSFERS TO TRUST FUND.—There is trans-
 4 ferred to the State Account and the Federal Account of
 5 the National Tobacco Settlement Trust Fund, without fur-
 6 ther appropriation, an amount equal to 50 percent in the
 7 case of the State Account and 50 percent in the case of
 8 the Federal Account of the—

9 (1) amounts received under section 102, less
 10 the amounts made available under subparagraphs
 11 (D), (E), and (F) of subsection (c)(3) for tobacco
 12 transition, Native Americans, and asbestos-related
 13 injuries;

14 (2) amounts paid as fines or penalties, includ-
 15 ing interest thereon, under section 104; and

16 (3) amounts repaid or recovered under section
 17 315, including interest thereon.

18 (c) EXPENDITURES FROM TRUST FUND.—

19 (1) IN GENERAL.—Amounts in the National
 20 Tobacco Settlement Trust Fund shall be made avail-
 21 able in each fiscal year, without further appropria-
 22 tion, as described in the table in paragraph (2).

23 (2) EXPENDITURE TABLE.—For purposes of
 24 paragraph (1), amounts shall be made available in

1 each full fiscal year following the date of enactment
 2 of this Act as follows:

In billions of dollars

Year	States	Public Health	Research	Asbestos	Agriculture	Native Americans
1st	3.25	1.1	2.15	0	3.0925	0.2
2nd	3.75	1.6	2.15	0.2	5.0925	0.2
3rd	4.75	2.2	2.55	0.2	6.1925	0.2
4th	7.0	3.3	3.7	0.2	.0925	0.2
5th	7.5	3.5	4.0	0.2	.0925	0.2
6th	8.0	4.0	4.0	0.2	0.1	0.2
7th	8.0	4.0	4.0	0.2	0.1	0.2
8th	8.0	4.0	4.0	0.2	0.1	0.2
9th	8.0	4.0	4.0	0.2	0.1	0.2
10th	8.0	4.0	4.0	0.2	0.1	0.2
11th	8.0	4.0	4.0	0.2	0.0575	0.2
12th	8.0	4.0	4.0	0.2	0.0575	0.2
13th	8.0	4.0	4.0	0.2	0.0575	0.2
14th	8.0	4.0	4.0	0.2	0.0575	0.2
15th	8.0	4.0	4.0	0.2	0.0575	0.2
16th	8.0	4.0	4.0	0.2	0.065	0.2
17th	8.0	4.0	4.0	0.2	0.065	0.2
18th	8.0	4.0	4.0	0.2	0.065	0.2
19th	8.0	4.0	4.0	0.2	0.065	0.2
20th	8.0	4.0	4.0	0.2	0.065	0.2
21st	8.0	4.0	4.0	0.2	0.0725	0.2
22nd	8.0	4.0	4.0	0.2	0.0725	0.2
23rd	8.0	4.0	4.0	0.2	0.0725	0.2
24th	8.0	4.0	4.0	0.2	0.0725	0.2
25th	8.0	4.0	4.0	0.2	0.0725	0.2

3 (3) DEFINITIONS AND USE OF FUNDS.—With
 4 respect to the table in paragraph (2):

5 (A) STATE.—The term “State” means the
 6 State account established under subsection
 7 (a)(3)(A). Amounts provided to the State Ac-
 8 count under this section shall be available in
 9 each fiscal year, without further appropriation,
 10 to make payments to the States as provided for
 11 in subtitle A of title V.

12 (B) RESEARCH.—The term “research”
 13 means activities carried out by the Secretary

1 under section 521 to conduct and support bio-
2 medical and behavioral research into the causes
3 of tobacco use, diseases and conditions associ-
4 ated with tobacco use and other substance
5 abuse dependencies, and the development of
6 therapies for such diseases and conditions.

7 (C) PUBLIC HEALTH.—The term “public
8 health” means public health activities carried
9 out by the Secretary under section 522 to im-
10 plement the National Anti-Tobacco Product
11 Consumption and Tobacco Product Cessation
12 Public Health Program to further the purposes
13 of this Act.

14 (D) ASBESTOS.—The term “asbestos”
15 means programs and activities carried out by
16 the Secretary of Labor relating to victims of as-
17 bestos-related injuries with respect to which the
18 use of tobacco products have been determined
19 to be a significant contributor.

20 (E) AGRICULTURE.—The term “agri-
21 culture” means the Tobacco Transition Account
22 to be administered by the Secretary of Agri-
23 culture as provided for under section 841.

24 (F) NATIVE AMERICANS.—The term “Na-
25 tive Americans” means anti-tobacco consump-

1 tion and cessation activities to be carried out by
2 the Indian Health Service under section 901(h).

3 (4) FEDERAL ACCOUNT.—Amounts to which
4 subparagraphs (B) through (D) of paragraph (3)
5 apply shall be deposited into Federal Account and
6 shall be available in each fiscal year, without further
7 appropriation, as described in such subparagraphs.

8 (5) RESERVATION.—Prior to making available
9 amounts under this subsection for a fiscal year, the
10 Trustees shall reserve the amounts to which sub-
11 paragraphs (E) through (G) of paragraph (3) apply,
12 for use in each fiscal year, without further appro-
13 priation, as described in such subparagraphs.

14 (d) MAINTENANCE OF EFFORT.—The Trustees may
15 not make an expenditure for a fiscal year—

16 (1) under subsection (c)(1), unless a State cer-
17 tifies that the aggregate expenditure of funds of the
18 State, exclusive of Federal funds, for the purposes of
19 the expenditure under such subsection will be main-
20 tained at a level that does not fall below the average
21 level of such aggregate expenditure for the preceding
22 2 fiscal years of the State; and

23 (2) under any subparagraph of subsection
24 (c)(2), unless such expenditure is in addition to, and
25 not in substitution for, any appropriation otherwise

1 applicable with respect to the purpose described in
 2 such subparagraph.

3 (e) ADJUSTMENTS.—The amounts described in sub-
 4 section (a)(1) relating to deposits and in subsection (c)
 5 relating to expenditures shall be adjusted annually by the
 6 Trustees to account for any adjustments made under sec-
 7 tion 102(c)(2) relating to fee payments. Amounts for ex-
 8 penditures under subsection (c) shall be adjusted propor-
 9 tionally by the Trustees based on the adjustments under
 10 section 102(c)(2).

11 **SEC. 102. LICENSING FEES PAYMENT SCHEDULE.**

12 (a) REQUIREMENT OF INITIAL PAYMENT.—To be eli-
 13 gible to receive the protections provided under subtitle C
 14 of title II, participating manufacturers shall, on the later
 15 of—

16 (1) the date of enactment of this Act;
 17 (2) the date on which the Protocol is executed
 18 under section 201; or
 19 (3) the date on which all applicable consent de-
 20 crees are executed under section 241;
 21 pay licensing fees to the Trust Fund in an aggregate
 22 amount of \$10,000,000,000.

23 (b) SUBSEQUENT BASE AMOUNT PAYMENTS.—To be
 24 eligible to receive the protections provided under subtitle
 25 C of title II, participating manufacturers shall, not later

1 than December 31 of each year involved, pay licensing fees
2 to the Trust Fund in an aggregate amount of—

3 (1) with respect to the first fiscal year following
4 the year in which the fees are paid under subsection
5 (a), \$9,792,500,000;

6 (2) with respect to the second such fiscal year,
7 \$12,992,500,000;

8 (3) with respect to the third such fiscal year,
9 \$16,092,500,000;

10 (4) with respect to the fourth such fiscal year,
11 \$14,492,500,000;

12 (5) with respect to the fifth such fiscal year,
13 \$15,492,500,000;

14 (6) with respect to the sixth such fiscal year,
15 and each of the next 4 succeeding fiscal years,
16 \$16,500,000,000 for each such year;

17 (7) with respect to the 11th such fiscal year,
18 and each of the next 4 succeeding fiscal years,
19 \$16,457,500,000 for each such year;

20 (8) with respect to the 16th such fiscal year,
21 and each of the next 4 succeeding fiscal years,
22 \$16,465,000,000 for each such year; and

23 (9) with respect to the 21st such fiscal year,
24 and each of the next 4 succeeding fiscal years,
25 \$16,472,500,000 for each such year.

1 (c) ADJUSTMENTS.—

2 (1) IN GENERAL.—The amount of the annual
3 base amount payments for each year under sub-
4 section (b) shall be adjusted by the Trustees in ac-
5 cordance with the formula described in paragraph
6 (2). In prescribing such adjustments, the Trustees
7 shall ensure that participating manufacturers make
8 annual payments based on their relative domestic
9 volume of sales of units of tobacco products during
10 the year for which the payment is due.

11 (2) FORMULA.—

12 (A) INFLATION ADJUSTMENT.—With re-
13 spect to a year, the base amount payment for
14 such year under subsection (b) shall be in-
15 creased for such year by the greater of 3 per-
16 cent or the percentage increase in the
17 Consumer Price Index for the period beginning
18 in the first full fiscal year beginning after the
19 date of enactment of this Act and ending in the
20 year for which the determination is being made.

21 (B) VOLUME ADJUSTMENT.—

22 (i) DETERMINATION.—With respect to
23 a year—

24 (I) if the actual volume is greater
25 than the base volume, the amount of

1 the annual base amount payments for
2 such year under subsection (b) shall
3 be increased by an amount equal to
4 the amount determined by multiplying
5 such base amount by the ratio of the
6 actual volume to the base volume; or

7 (II) if the actual volume is less
8 than the base volume, the annual base
9 amount payments for such year under
10 subsection (b) shall be reduced by an
11 amount equal to the amount deter-
12 mined by multiplying such base
13 amount by the greater of—

14 (aa) the ratio of the actual
15 volume to the base volume; or

16 (bb) the ratio of the portion
17 of the actual volume attributable
18 to sales to individuals 18 years of
19 age or older to the portion of the
20 base volume attributable to sales
21 to individual 18 years of age or
22 older.

23 (ii) REQUIRED REDUCTION.—If a re-
24 duction in the applicable base amount is
25 required under clause (ii), but the partici-

1 pating manufacturers' aggregate net oper-
2 ating profits from domestic sales of to-
3 bacco products for the year for which the
4 annual payment is being calculated, as re-
5 ported to the Securities and Exchange
6 Commission, is greater than such partici-
7 pating manufacturers' aggregate net oper-
8 ating profits from domestic sales of to-
9 bacco products in 1996 (as increased for
10 inflation) as reported to the Securities and
11 Exchange Commission, such reduction
12 shall be reduced (but not below zero) by an
13 amount equal to 25 percent of such in-
14 crease in such profits.

15 (iii) NONREPORTING MANUFAC-
16 TURER.—In the case of a participating
17 manufacturer that does not report profits
18 to the Securities and Exchange Commis-
19 sion, the profit figures referred to in this
20 subparagraph shall be those reflected in
21 that participating manufacturer's audited
22 financial statements for the applicable
23 year. The determination of the participat-
24 ing manufacturers' aggregate net operating
25 profits from domestic sales of tobacco

1 products shall be derived using the same
 2 methodology as was employed in deriving
 3 such participating manufacturers' aggregate net operating profits from domestic
 4 sales of tobacco products in 1996, as re-
 5 ported to the Securities and Exchange
 6 Commission.

8 (iv) DEFINITIONS.—For purposes of
 9 this subparagraph—

10 (I) the term “actual volume”

11 means the number of units of tobacco
 12 products sold domestically by partici-
 13 pating manufacturers in the year in-
 14 volved (as reported by such participat-
 15 ing manufacturers to the Secretary);
 16 and

17 (II) the term “base volume”

18 means the number of units of tobacco
 19 products sold domestically by partici-
 20 pating manufacturers in 1996.

21 (d) DETERMINATION OF AMOUNT.—The amount of

22 licensing fees that each participating manufacturer shall
 23 be required to pay to the Trust Fund under this section
 24 shall be determined under the Protocol under section 226.

25 In making such determinations, consideration shall be pro-

1 vided for any payments made by manufacturers to States
 2 under any settlement of a civil action described in section
 3 256(a).

4 (e) GUIDELINES.—The Trustees shall develop guide-
 5 lines and implement procedures for the collection of fees
 6 under this section.

7 (f) COLLECTION OF UNPAID PAYMENTS.—In any
 8 case where the Trustees do not receive a payment under
 9 this section within 30 days after it is due, such payment
 10 shall be treated as a claim of the United States Govern-
 11 ment subject to subchapter II of chapter 37 of title 31,
 12 United States Code.

13 **SEC. 103. ADMINISTRATIVE PROVISIONS.**

14 (a) DUTY OF TRUSTEES.—It shall be the duty of the
 15 Attorney General as a Trustees of the National Tobacco
 16 Settlement Trust Fund to hold the Trust Fund and to
 17 report to the Committees on Judiciary, Labor and Human
 18 Resources, Commerce and Agriculture of the Senate and
 19 the Committees on Judiciary, Commerce, and Agriculture
 20 of the House of Representatives each fiscal year—

21 (1) on the financial condition and the results of
 22 the operations of the Trust Fund during the fiscal
 23 year preceding the fiscal year in which such report
 24 is submitted, and

1 (2) on the expected condition and operations of
 2 the Trust Fund during the fiscal year in which such
 3 report is submitted and the 5 fiscal years succeeding
 4 such fiscal year.

5 Such report shall be printed as both a House and Senate
 6 document of the session of the Congress to which the re-
 7 port is made.

8 (b) INVESTMENT OF AMOUNTS IN TRUST FUND.—

9 (1) INVESTMENT IN OBLIGATIONS.—The Trust-
 10 ees shall invest such portion of the State Account
 11 and the Federal Account of the National Tobacco
 12 Settlement Trust Fund as is not, in their judgment,
 13 required to meet current withdrawals. Such invest-
 14 ments may be made only in interest-bearing obliga-
 15 tions of the United States. For such purpose, such
 16 obligations may be acquired—

17 (A) on original issue at the issue price, or

18 (B) by purchase of outstanding obligations
 19 at the market price.

20 (2) SALE OF OBLIGATIONS.—Any obligation ac-
 21 quired by the State Account or the Federal Account
 22 of the Trust Fund may be sold by the Secretary of
 23 the Treasury at the market price.

24 (3) CREDITING OF INTEREST AND SALE PRO-
 25 CEEDS.—The interest on, and the proceeds from the

1 sale or redemption of, any obligations held in the
 2 State Account or the Federal Account of the Trust
 3 Fund shall be credited to and form a part of such
 4 Account.

5 (c) ESTABLISHMENT OF ADVISORY BOARD.—

6 (1) IN GENERAL.—There is established an advi-
 7 sory board (referred to in this subsection as the
 8 “Advisory Board”) to advise the Trustees of the Na-
 9 tional Tobacco Settlement Trust Fund in the admin-
 10 istration of the Trust Fund.

11 (2) MEMBERSHIP.—

12 (A) IN GENERAL.—The Advisory Board
 13 shall be composed of the Trustees of the Na-
 14 tional Tobacco Settlement Trust Fund, who
 15 shall act as the co-chairpersons of the Advisory
 16 Board, and 4 members to be appointed—

17 (i) $\frac{1}{2}$ by the Speaker of the House of
 18 Representatives, in consultation with the
 19 minority leader of the House of Represent-
 20 atives, and

21 (ii) $\frac{1}{2}$ by the majority leader of the
 22 Senate, in consultation with the minority
 23 leader of the Senate.

1 (b) NOMINEES.—The members appointed
2 under each clause of subparagraph (A) shall be
3 chosen in the following manner:

4 (i) 1 member from a nominee list pre-
5 pared by State attorneys general.

6 (ii) 1 member from a nominee list
7 prepared by representatives of the tobacco
8 industry.

9 (iii) 1 member from a nominee list
10 prepared by representatives of public
11 health experts.

12 (iv) 1 member from a nominee list
13 prepared by representatives of the mem-
14 bers of the class of plaintiffs in *Dianne*
15 *Castano v. American Tobacco Company*.

16 (3) TERMS AND VACANCIES.—Each member of
17 the Advisory Board shall serve for a term of 4 years,
18 to begin on the date of appointment. Any vacancy on
19 the Advisory Board shall not affect its powers, but
20 shall be filled in the same manner as the original ap-
21 pointment. Any member appointed to fill a vacancy
22 occurring before the expiration of the term for which
23 the member's predecessor was appointed shall be ap-
24 pointed for the remainder of that term.

25 (4) POWERS.—

1 (A) HEARINGS.—The Advisory Board may
2 hold such hearings, sit and act at such times
3 and places, take such testimony, and receive
4 such evidence as the Advisory Board considers
5 advisable to carry out the duties of the Advisory
6 Board.

7 (B) INFORMATION FROM FEDERAL AGEN-
8 CIES.—The Advisory Board may secure directly
9 from any Federal department or agency such
10 information as the Advisory Board considers
11 necessary to carry out such duties.

12 (5) PERSONNEL MATTERS.—

13 (A) COMPENSATION.—Each member of the
14 Advisory Board who is not an officer or em-
15 ployee of the Federal Government shall serve
16 without compensation. All members of the Advi-
17 sory Board who are officers or employees of the
18 United States shall serve without compensation
19 in addition to that received for their services as
20 officers or employees of the United States.

21 (B) TRAVEL EXPENSES.—The members of
22 the Advisory Board shall be allowed travel ex-
23 penses, including per diem in lieu of subsist-
24 ence, at rates authorized for employees of agen-
25 cies under subchapter I of chapter 57 of title 5,

1 United States Code, while away from their
2 homes or regular places of business in the per-
3 formance of services for the Advisory Board.

4 (6) LIMITATION.—Amounts used for adminis-
5 trative expenses under this section shall not exceed
6 .1 percent of the amounts in the Trust Fund in each
7 year or \$15,000,000 whichever is less.

8 (7) NONAPPLICATION OF FACA.—The provi-
9 sions of the Federal Advisory Committee Act (5
10 U.S.C. App. 2) shall not apply to the Advisory
11 Board established under this subsection.

12 (d) BUDGETARY TREATMENT OF TRUST FUND OP-
13 ERATIONS.—

14 (1) IN GENERAL.—The receipts and disburse-
15 ments of the National Tobacco Settlement Trust
16 Fund shall not be included in the totals of the budg-
17 et of the United States Government as submitted by
18 the President or of the congressional budget and
19 shall be exempt from any general budget limitation
20 imposed by statute on expenditures and net lending
21 (budget outlays) of the United States Government.

22 (2) NO TRANSFERS BETWEEN TRUST FUND
23 AND GENERAL FUND.—No provision of law may pro-
24 vide for payments from the general fund of the
25 Treasury to the National Tobacco Settlement Trust

1 Fund or for payments from the Trust Fund to the
2 general fund of the Treasury.

3 **SEC. 104. ENFORCEMENT.**

4 (a) INITIAL PENALTY.—There is hereby imposed an
5 initial penalty on the failure of any participating manufac-
6 turer to make any fee payment required under section 102
7 within 60 days after the date on which such fee is due.

8 (b) AMOUNT OF PENALTY.—The amount of the pen-
9 alty imposed by subsection (a) on any failure with respect
10 to a manufacturer shall be \$100,000 for each day during
11 the noncompliance period.

12 (c) NONCOMPLIANCE PERIOD.—For purposes of this
13 section, the term “noncompliance period” means, with re-
14 spect to any failure to make the fee payment required
15 under section 102, the period—

16 (1) beginning on the due date for such pay-
17 ment; and

18 (2) ending on the date on which such payment
19 is paid in full.

20 (d) LIMITATIONS.—

21 (1) IN GENERAL.—No penalty shall be imposed
22 by subsection (a) on any failure to make a fee pay-
23 ment under section 102 during any period for which
24 it is established to the satisfaction of the Trustees
25 that none of the persons responsible for such failure

1 knew or, exercising reasonable diligence, would have
2 known, that such failure existed.

3 (2) CORRECTIONS.—No penalty shall be im-
4 posed under subsection (a) on any failure to make
5 a fee payment under section 102 if—

6 (A) such failure was due to reasonable
7 cause and not to willful neglect; and

8 (B) such failure is corrected during the 30-
9 day period beginning on the 1st date that any
10 of the persons responsible for such failure knew
11 or, exercising reasonable diligence, would have
12 known, that such failure existed.

13 (3) WAIVER.—In the case of any failure to
14 make a fee payment under section 102 that is due
15 to reasonable cause and not to willful neglect, the
16 Trustees may waive all or part of the penalty im-
17 posed under subsection (a) to the extent that the
18 Trustees determines that the payment of such pen-
19 alty would be excessive relative to the failure in-
20 volved.

21 (e) STATUS AS PARTICIPATING MANUFACTURER.—If,
22 at the end of the 1-year period beginning on the date on
23 which a participating manufacturer fails to make a timely
24 fee payment as required under section 102, such manufac-
25 ture has not fully paid the amount owed by such manufac-

1 turer under such section, such manufacturer shall be con-
 2 sidered a nonparticipating manufacturer and shall not be
 3 eligible for any protections or assistance provided for
 4 under this Act (including the liability protections under
 5 subtitle C of title I).

6 **TITLE II—NATIONAL PROTOCOL**
 7 **AND LIABILITY PROVISIONS**
 8 **Subtitle A—National Tobacco**
 9 **Control Protocol**

10 **CHAPTER 1—ESTABLISHMENT**

11 **SEC. 201. REQUIREMENT.**

12 (a) REQUIREMENT.—To be eligible to receive the li-
 13 ability protections provided for in subtitle C, each tobacco
 14 manufacturer to which this Act applies shall, not later
 15 than 90 days after the date of enactment of this Act, enter
 16 into a National Tobacco Control Protocol with the Attor-
 17 ney General of the United States, the chief executive offi-
 18 cer of each State, and a representative of the members
 19 of the class certified for purposes of *Dianne Castano v.*
 20 *American Tobacco Company*.

21 (b) TERMS AND CONDITIONS.—The Protocol referred
 22 to in subsection (a) shall be—

23 (1) developed by the Attorney General, in con-
 24 sultation with the Secretary, the State attorneys'
 25 general, and other individuals determined appro-

(c) **CONTRACTS.**—As part of the Protocol under this subtitle, a participating manufacturer shall agree, with respect to any contract entered into by the manufacturer with an entity that is a distributor or retailer of tobacco products, to include in such contract as a term and condition a requirement that such distributor or retailer comply with the provisions of the Protocol.

14 **Subchapter A—Protocol Restrictions on**
15 **Advertising**

17 The provisions of this subchapter shall be considered
18 as part of the Protocol.

21 (a) PROHIBITION ON OUTDOOR ADVERTISING.—

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1 (2) STADIA AND ARENAS.—Except as otherwise
 2 provided in this title, a manufacturer, distributor, or
 3 retailer shall not advertise tobacco products in any
 4 arena or stadium where athletic, musical, artistic or
 5 other social or cultural events or activities occur.

6 (b) PROHIBITION ON USE OF HUMAN IMAGES AND
 7 CARTOONS.—No manufacturer, distributor, or retailer
 8 may use a human image or a cartoon character or cartoon-
 9 type character in its advertising, labeling or promotional
 10 material with respect to a tobacco product.

11 (c) PROHIBITION ON ADVERTISING ON THE
 12 INTERNET.—No manufacturer, distributor, or retailer
 13 may use the Internet to advertise tobacco products unless
 14 such an advertisement is inaccessible in or from the Unit-
 15 ed States.

16 (d) PROHIBITION ON POINT OF SALE ADVERTIS-
 17 ING.—

18 (1) IN GENERAL.—Except as otherwise pro-
 19 vided in this subsection, no manufacturer, distribu-
 20 tor, or retailer may use point of sale advertising of
 21 tobacco products.

22 (2) ADULT ONLY STORES AND TOBACCO OUT-
 23 LETS.—Paragraph (1) shall not apply to point of
 24 sale advertising at adult only stores and tobacco out-
 25 lets.

1 (3) PERMISSIBLE ADVERTISING.—

2 (A) IN GENERAL.—Each manufacturer of
3 tobacco products may display not more than 2
4 separate point of sale advertisements in or at
5 each location at which tobacco products are of-
6 fered for sale.

7 (B) MARKET SHARE MANUFACTURERS.—A
8 manufacturer with at least 25 percent of the
9 market share of the tobacco product involved
10 may display an additional point of sale adver-
11 tisement in or at each location at which tobacco
12 products are offered for sale.

13 (C) RETAILERS.—No manufacturer, dis-
14 tributor, or retailer may enter into any arrange-
15 ment with a retailer to limit the ability of the
16 retailer to display any form of permissible point
17 of sale advertisement or promotional material
18 originating with another manufacturer, dis-
19 tributor, or retailer.

20 (4) LIMITATIONS.—

21 (A) IN GENERAL.—A point of sale adver-
22 tisement permitted under this subsection shall
23 be comprised of a display area than is not larg-
24 er than 576 square inches (either individually
25 or in the aggregate) and shall consist only of

1 black letters on a white background or other
2 recognized typographical marks. Such advertise-
3 ment shall not be attached to nor located within
4 2 feet of any fixture on which candy is dis-
5 played for sale.

6 (B) AUDIO AND VIDEO FORMATS.—Audio
7 and video advertisements permitted under sec-
8 tion 214(c) may be distributed to individuals
9 who are 18 years of age or older at point of sale
10 but may not be played or viewed at such point
11 of sale.

12 (C) DISPLAY FIXTURES.—Display fixtures
13 in the form of signs consisting of brand name
14 and price and not larger than 2 inches in height
15 are permitted.

16 (5) DEFINITION.—For purposes of this sub-
17 section, the term “point of sale advertising” means
18 all printed or graphical materials bearing the brand
19 name (alone or in conjunction with any other word),
20 logo, motto, selling message, recognizable color or
21 pattern of colors, or any other indicia of product
22 identification similar or identical to those used for
23 tobacco products, which, when used for its intended
24 purpose, can reasonably be anticipated to be seen by

1 customers at a location at which tobacco products
2 are offered for sale.

3 **SEC. 213. CONSENSUAL RESTRICTIONS.**

4 (a) RESTRICTION ON PRODUCT NAMES.—A manu-
5 facturer shall not use a trade or brand name of a non-
6 tobacco product as the trade or brand name for a cigarette
7 or smokeless tobacco product, except for a tobacco product
8 whose trade or brand name was on both a tobacco product
9 and a nontobacco product that were sold in the United
10 States on January 1, 1995.

11 (b) ADVERTISING LIMIT ACTIONS.—

12 (1) IN GENERAL.—A manufacturer, distributor,
13 or retailer may in accordance with this title, dissemi-
14 nate or cause to be disseminated advertising or la-
15 beling which bears a tobacco product brand name
16 (alone or on conjunction with any other word) or
17 any other indicia of tobacco product identification
18 only in newspapers, in magazines, in periodicals or
19 other publications (whether periodic or limited dis-
20 tribution), on billboards, posters and placards in ac-
21 cordance with section 212(a), in nonpoint of sale
22 promotional material (including direct mail), in
23 point-of-sale promotional material, and in audio or
24 video formats delivered at a point-of-sale.

1 (2) LIMITATION.—A manufacturer, distributor,
2 or retailer that intends to disseminate, or to cause
3 to be disseminated, advertising or labeling for a to-
4 bacco product in a medium that is not described in
5 paragraph (1) shall notify the Commissioner not less
6 than 30 days prior to the date on which such me-
7 dium is to be used. Such notice shall describe the
8 medium and discuss the extent to which the adver-
9 tising or labeling may be seen by individuals who are
10 under 18 years of age.

11 (3) ACTION BY COMMISSIONER.—Not later than
12 30 days after the date on which the Commissioner
13 receives a notice under paragraph (2), the Commis-
14 sioner shall make a determination with respect to
15 the action to be taken concerning such notice.

16 (c) RESTRICTION ON PLACEMENT IN ENTERTAIN-
17 MENT MEDIA.—

18 (1) IN GENERAL.—No payment shall be made
19 by any manufacturer, distributor, or retailer for the
20 placement of any tobacco product or tobacco product
21 package or advertisement—

22 (A) as a prop in any television program or
23 motion picture produced for viewing by the gen-
24 eral public; or

25 (B) in a video or on a video game machine.

1 (2) VIDEO GAME.—The term “video game”
 2 means any electronic amusement device that utilizes
 3 a computer, microprocessor, or similar electronic cir-
 4 cuitry and its own cathode ray tube, or is designed
 5 to be used with a television set or a monitor, that
 6 interacts with the user of the device.

7 (3) VIDEO.—The term “video” means an audio-
 8 visual work produced for viewing by the general pub-
 9 lic, such as a television program, a motion picture,
 10 a music video, and the audiovisual display of a video
 11 game.

12 (d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO
 13 PRODUCTS.—No direct or indirect payment shall be made
 14 by any manufacturer, distributor, or retailer to any entity
 15 for the purpose of promoting the image or use of a tobacco
 16 product through print or film media that appeals to indi-
 17 viduals under 18 years of age or through a live perform-
 18 ance by an entertainment artist that appeals to such indi-
 19 viduals.

20 **SEC. 214. AGREEMENT ON FORMAT AND CONTENT RE-**
 21 **QUIREMENTS FOR LABELING AND ADVERTIS-**
 22 **ING.**

23 (a) IN GENERAL.—Except as provided in subsections
 24 (b) and (c), each manufacturer, distributor, or retailer ad-
 25 vertising or causing to be advertised, disseminating or

1 causing to be disseminated, any labeling or advertising for
 2 a tobacco product shall use only black text on a white
 3 background.

4 (b) CERTAIN ADVERTISING EXCEPTED.—

5 (1) IN GENERAL.—Subsection (a) shall not
 6 apply to advertising—

7 (A) in any facility where vending machines
 8 and self-service displays are permitted under
 9 this title if the advertising involved—

10 (i) is not visible from outside of the
 11 facility; and

12 (ii) is affixed to a wall or fixture in
 13 the facility;

14 (B) that appears in any publication
 15 (whether periodic or limited distribution) that is
 16 an adult publication.

17 (2) ADULT PUBLICATION.—For purposes of
 18 paragraph (1)(B), the term “adult publication”
 19 means a newspaper, magazine, periodical, or other
 20 publication—

21 (A) whose readers under 18 years of age
 22 constitute 15 percent or less of the total reader-
 23 ship as measured by competent and reliable
 24 survey evidence; and

1 (B) that is read by fewer than 2,000,000
2 individuals who are under 18 years of age as
3 measured by competent and reliable survey evi-
4 dence.

5 (c) AUDIO OR VIDEO FORMATS.—Each manufac-
6 turer, distributor or retailer advertising or causing to be
7 advertised any advertising for a tobacco product in an
8 audio or video format shall comply with the following:

9 (1) With respect to an audio format, the adver-
10 tising shall be limited to words only with no music
11 or sound effects.

12 (2) With respect to a video format, the advertis-
13 ing shall be limited to static black text only on a
14 white background. Any audio with the video adver-
15 tising shall be limited to words only with no music
16 or sound effects.

17 **SEC. 215. AGREEMENT TO BAN ON NONTOBACCO ITEMS**
18 **AND SERVICES, CONTESTS AND GAMES OF**
19 **CHANCE, AND SPONSORSHIP OF EVENTS.**

20 (a) BAN ON ALL NON-TOBACCO MERCHANDISE.—No
21 manufacturer, importer, distributor, or retailer shall mar-
22 ket, license, distribute, sell or cause to be marketed, li-
23 censed, distributed or sold any item (other than tobacco
24 products) or service, which bears the brand name (alone
25 or in conjunction with any other word), logo, symbol,

1 motto, selling message, recognizable color or pattern of
2 colors, or any other indicia of product identification simi-
3 lar or identifiable to those used for any brand of tobacco
4 products.

5 (b) GIFTS, CONTESTS, AND LOTTERIES.—No manu-
6 facturer, distributor, or retailer shall offer or cause to be
7 offered to any person purchasing tobacco products any gift
8 or item (other than a tobacco product) in consideration
9 of the purchase of such products, or to any person in con-
10 sideration of furnishing evidence, such as credits, proofs-
11 of-purchase, or coupons, of such a purchase.

12 (c) SPONSORSHIP.—

13 (1) IN GENERAL.—No manufacturer, distribu-
14 tor, or retailer shall sponsor or cause to be spon-
15 sored any athletic, musical, artistic or other social or
16 cultural event, or any entry or team in any event, in
17 which the brand name (alone or in conjunction with
18 any other word), logo, motto, selling message, rec-
19 ognizable color or pattern of colors, or any other in-
20 dicia of product identification similar or identical to
21 those used for tobacco products is used.

22 (2) USE OF CORPORATE NAME.—A manufac-
23 turer, distributor, or retailer may sponsor or cause
24 to be sponsored any athletic, musical, artistic or
25 other social or cultural event in the name of the cor-

1 poration which manufactures the tobacco product
2 if—

3 (A) both the corporate name and the cor-
4 poration were registered and in use in the Unit-
5 ed States prior to January 1, 1995; and

6 (B) the corporate name does not include
7 any brand name (alone or in conjunction with
8 any other word), logo, symbol, motto, selling
9 message, recognizable color or pattern of colors,
10 or any other indicia or product identification
11 identical or similar to, or identifiable with,
12 those used for any brand of tobacco products.

13 **Subchapter B—Provisions relating to**
14 **Lobbying**

15 **SEC. 220. APPLICATION OF SUBCHAPTER.**

16 The provisions of this subchapter shall be considered
17 as part of the Protocol.

18 **SEC. 221. AGREEMENT TO PROVISIONS RELATING TO LOB-**
19 **BYING.**

20 (a) DEFINITIONS.—For purposes of this section, the
21 terms “lobbying activities”, “lobbying firm”, and “lobby-
22 ist” have the meanings given such terms by section 3 of
23 the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

24 (b) GENERAL REQUIREMENT.—A manufacturer of a
25 tobacco product shall require that any lobbyist or lobbying

1 firm employed or retained by the manufacturer, or any
2 other individual who performs lobbying activities on behalf
3 of the manufacturer, as part of the employment or re-
4 tainer agreement refrain from supporting or opposing any
5 Federal or State legislation, or otherwise supporting or op-
6 posing any governmental action on any matter without the
7 express consent of the manufacturer.

8 (c) ADDITIONAL AGREEMENTS.—An individual shall
9 not be employed or retained to perform lobbying activities
10 on behalf of a manufacturer of a tobacco product unless
11 such individual enters into a signed agreement with the
12 manufacturer that acknowledges that the individual—

13 (1) is fully aware of, and will fully comply with,
14 all applicable laws and regulations relating to the
15 manufacture and distribution of tobacco products;

16 (2) has reviewed and will fully comply with the
17 requirements of this Act (and the amendments made
18 by this Act);

19 (3) has reviewed and will fully comply with any
20 consent decree entered into under subtitle C as that
21 decree applies to the manufacturer involved; and

22 (4) has reviewed and will fully comply with the
23 business conduct policies and other applicable poli-
24 cies and commitments (including those relating to

1 the prevention of underage tobacco use) of the man-
 2 ufacturer involved.

3 **SEC. 222. AGREEMENT TO TERMINATE CERTAIN ENTITIES.**

4 (a) REQUIREMENT.—Not later than 1 year after the
 5 date of enactment of this Act, manufacturers of tobacco
 6 products shall provide for the termination of the activities
 7 of the Tobacco Institute and the Council for Tobacco Re-
 8 search, U.S.A. and the Institute and Council shall be dis-
 9 solved.

10 (b) ESTABLISHMENT OF OTHER ENTITIES.—

11 (1) AUTHORITY.—Manufacturers of tobacco
 12 products may form or participate in any trade orga-
 13 nization or other industry association only in accord-
 14 ance with this subsection.

15 (2) BOARD OF DIRECTORS.—A trade organiza-
 16 tion or other industry association formed or partici-
 17 pated in under this subsection shall—

18 (A) shall be administered by an independ-
 19 ent board of directors, of which—

20 (i) during the 10-year period begin-
 21 ning on the date on which the organization
 22 or association is formed or first partici-
 23 pated in under this subsection, not less
 24 than 20 percent (at least 1 member) shall
 25 be individuals who are not current or

1 former directors, officers, or employees of
2 an entity terminated under subsection (a)
3 or of the members of the association or or-
4 ganization; and

5 (ii) during the life of the association
6 or organization, no member shall be a di-
7 rector of any of the members of the asso-
8 ciation or organization;

9 (B) be administered by officers who are
10 appointed by the board of directors and who are
11 not otherwise employed by any of the members
12 of the association or organization; and

13 (C) be provided with legal advice by a legal
14 adviser who is appointed by the board of direc-
15 tors and who is not otherwise employed by any
16 of the members of the association or organiza-
17 tion.

18 (3) BY-LAWS.—A trade organization or other
19 industry association formed or participated in under
20 this subsection shall adopt by-laws that—

21 (A) prohibit meetings by members of the
22 association or organization who are competitors
23 in the tobacco industry except under the spon-
24 sorship of the association or organization;

1 (B) require that every meeting of the
 2 board of directors, or a subcommittee of the
 3 board or other general committee, proceed
 4 under and strictly adhere to an agenda that is
 5 approved by the legal counsel and circulated in
 6 advance; and

7 (C) require the taking of minutes that de-
 8 scribe the substance of any meeting of the
 9 members of the association or organization and
 10 the maintenance of such minutes in the records
 11 of the association or organization for a period
 12 of 5 years following the meeting.

13 (c) DEPARTMENT OF JUSTICE.—

14 (1) OVERSIGHT.—The Attorney General and, as
 15 appropriate, State antitrust authorities shall exercise
 16 oversight authority over any association or organiza-
 17 tion to which subsection (b) applies.

18 (2) ACCESS AND INSPECTION.—During the 10-
 19 year period beginning on the date on which an asso-
 20 ciation or organization to which subsection (b) ap-
 21 plies is formed, the Attorney General and, as appro-
 22 priate State antitrust authorities shall, upon the
 23 provision of reasonable notice to the legal counsel of
 24 the association or organization, have access to—

1 (A) all books, records, meeting agenda and
 2 minutes, and other documents maintained by
 3 the association or organization; and

4 (B) the directors, officers, and employees
 5 of the association or organization for interview
 6 purposes.

7 (3) MULTI-STATE COMMITTEE.—Two or more
 8 States, acting through the attorney general of each
 9 such State, may establish a multi-State oversight
 10 committee to assist the Attorney General in exercis-
 11 ing the oversight responsibilities under this section.

12 (4) CONFIDENTIALITY.—The Attorney General
 13 shall promulgate regulations to provide that mate-
 14 rials provided under paragraph (2) are protected
 15 with appropriate confidentiality protections.

16 (d) ANTITRUST EXEMPTIONS.—The provisions of the
 17 Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29
 18 U.S.C. 52 et seq.), and any other Federal or State anti-
 19 trust laws shall not apply to an association or organization
 20 to which subsection (b) applies.

21 **Subchapter C—Other Provisions**

22 **SEC. 225. APPLICATION OF SUBCHAPTER.**

23 The provisions of this subchapter shall be considered
 24 as part of the Protocol.

1 **SEC. 226. DETERMINATION OF LICENSING FEE AMOUNT.**

2 With respect to the total amount of licensing fees to
3 be paid by participating manufacturers under section 102
4 for a fiscal year, such manufacturers shall determine the
5 percentage of such total amount that each such manufac-
6 turer shall be required to pay and the manner in which
7 such payments will be made.

8 **SEC. 227. ATTORNEY'S FEES AND EXPENSES.**

9 (a) ARBITRATION PANEL.—

10 (1) ESTABLISHMENT.—For the purpose of
11 awarding of attorneys' fees and expenses relating to
12 litigation affected by, or legal services that resulted
13 in whole or in part in, this Act, there is established
14 an Arbitration Panel which shall consist of—

15 (A) 3 members to be appointed by the
16 Trustees;

17 (B) 1 member to be appointed by the par-
18 ticipating manufacturers;

19 (C) 1 member to be appointed by the At-
20 torneys General of the States who were signato-
21 ries to the Memorandum of Understanding
22 dated June 20, 1997, by and between tobacco
23 manufacturers, the Attorneys Generals, and pri-
24 vate attorneys; and

25 (D) 1 member to be appointed by the pri-
26 vate attorneys, including attorneys representing

1 plaintiffs in the case of Dianne Castano v.
2 American Tobacco Company.

3 (2) OPERATION.—

4 (A) ESTABLISHMENT.—The members of
5 the Arbitration Panel shall be appointed not
6 later than 30 days after the effective date of
7 this Act.

8 (B) PROCEDURES.—Not later than 30
9 days after the date on which all members of the
10 Arbitration Panel are appointed under para-
11 graph (1), the Panel shall establish the proce-
12 dures under which the Panel will operate which
13 shall include—

14 (i) a requirement that any finding by
15 the Arbitration Panel must be in writing
16 and supported by written reasons;

17 (ii) procedures for the exchanging of
18 exhibits and witness lists by the various
19 claimants for awards;

20 (iii) to the maximum extent prac-
21 ticable, requirements that proceedings be-
22 fore the Panel be based on affidavits rath-
23 er than live testimony; and

24 (iv) a requirement that all claims be
25 submitted to the Arbitration Panel not

1 later than 3 months after the effective date
2 of this Act and a determination made by
3 the Panel with respect to such claims not
4 later than 7 months after such date of en-
5 actment.

6 (3) RIGHT TO PETITION.—Any individual attor-
7 ney or group of attorneys involved in litigation af-
8 fected by this Act shall have the right to petition the
9 Arbitration Panel for attorneys' fees and expenses.

10 (4) CRITERIA.—In making any award pursuant
11 to this section, the Arbitration Panel shall consider
12 the following criteria:

13 (A) The time and labor required by the
14 claimant.

15 (B) The novelty and difficulty of the ques-
16 tions involved in the action for which the claim-
17 ant is making a claim.

18 (C) The skill requisite to perform the legal
19 service involved properly.

20 (D) The preclusion of other employment by
21 the attorney due to acceptance of the action in-
22 volved.

23 (E) Whether the fee is fixed or a percent-
24 age.

1 (F) Time limitations imposed by the client
2 or the circumstances.

3 (G) The amount involved and the results
4 obtained.

5 (H) The experience, reputation, and ability
6 of the attorneys involved.

7 (I) The undesirability of the action.

8 (5) APPEAL AND ENFORCEMENT.—The findings
9 of the Arbitration Panel shall be final, binding, non-
10 appealable, and payable within 30 days after the
11 date on which the finding is made public, except that
12 if an award is to be paid in installments, the first
13 installment shall be payable within such 30 day pe-
14 riod and succeeding installments shall be paid annu-
15 ally thereafter.

16 (b) SOURCE AND PAYMENT OF AWARDS.—In no
17 event shall any award of the Arbitration Panel be paid
18 from, credited against, or otherwise affect in any way any
19 fee payments that are required to be made by any partici-
20 pating manufacturer under to section 102 or under any
21 other provision of this Act. Any such award shall be paid
22 by participating manufacturers pursuant to an allocation
23 agreement among such manufacturers.

24 (c) VALIDITY AND ENFORCEABILITY OF PRIVATE
25 AGREEMENTS.—Notwithstanding any other provision of

1 this Act, nothing in this section shall be construed to abro-
2 gate or restrict in any way the rights of any parties to
3 mediate, negotiate, or settle any fee or expense disputes
4 or issues to which this section applies, or to enter into
5 private agreements with respect to the allocation or divi-
6 sion of fees among the attorneys party to any such agree-
7 ment.

8 (d) LIMITATION.—Notwithstanding any other provi-
9 sion of law, in no event shall the amount of attorneys’
10 fees awarded under this section for a fiscal year exceed
11 an amount equal to 5 percent of the amount paid to the
12 Trust Fund under section 102 for the fiscal year. Any
13 amounts in excess of such amount may be collected in sub-
14 sequent fiscal years subject to the 5 percent limitation
15 with respect to each such fiscal year. The manufacturer
16 signatories to the Protocol shall be responsible for the pay-
17 ment of all such attorneys’ fees and such payments shall
18 not be counted against the fee payments to be made under
19 section 102 nor shall they be drawn from the National
20 Tobacco Settlement Trust Fund.

21 **SEC. 228. LIMITATIONS WITH RESPECT TO INDIAN COUN-**
22 **TRY.**

23 (a) GENERAL PROHIBITION.—A participating manu-
24 facturer shall not engage in any activity within Indian
25 country (as defined in section 901) that is otherwise pro-

hibited under this Act (or an amendment made by this Act).

(b) **LIMITATION ON SALE.**—A participating manufacturer shall not sell or otherwise distribute a tobacco product for subsequent manufacture, distribution, or sale to an Indian tribe or tribal organization, or provide such products to a manufacturer, distributor, or retailer that is subject to the jurisdiction of a tribe or organization, except under the same terms and conditions as the manufacturer imposes on other manufacturers, distributors, or retailers.

CHAPTER 3—ENFORCEMENT

SEC. 231. FEDERAL ENFORCEMENT OF THE PROTOCOL.

(a) **CIVIL ACTION.**—The Attorney General, acting in his or her capacity as a Trustee, may bring a civil action for the enforcement, or to restrain any breach, of the Protocol in the United States District Court for the District of Columbia or in the district court of the United States for the district in which the breach occurred.

(b) **REMEDY.**—In any action under subsection (a), the district court involved—

(1) shall restrain the conduct that is the subject of the breach of the Protocol;

(2) shall order specific performance of the obligations set forth in the Protocol; and

1 (3) may order civil penalties against any manu-
2 facturer who knowingly violates a requirement of the
3 Protocol in an amount not to exceed \$10,000,000
4 for all such violations adjudicated in a single pro-
5 ceeding.

6 (c) **CONTRACTS WITH STATE AGENCIES.**—The At-
7 torney General may enter into contracts with an agency
8 of any State to assist in the enforcement of the provisions
9 of the Protocol.

10 (d) **ACTION BY ATTORNEY GENERAL.**—With respect
11 to the funding of any activities under subsection (a), the
12 Attorney General shall use amounts available in the Trust
13 Fund under section 101. If the Attorney General deter-
14 mines that amounts available in the Trust Fund are insuf-
15 ficient, the Attorney General may use amounts available
16 for the activities of the Department of Justice.

17 **SEC. 232. STATE ENFORCEMENT OF THE PROTOCOL.**

18 (a) **CIVIL ACTION.**—The chief law enforcement offi-
19 cer of a State may bring in its own name and within its
20 jurisdiction a civil action for the enforcement, or to re-
21 strain a breach, of the Protocol if the alleged violation that
22 is the subject of the proceedings occurred in that State.

23 (b) **LIMITATION.**—No proceeding described in sub-
24 section (a) may be commenced or maintained by a State—

1 (1) prior to the expiration of the 30-day period
2 beginning on the date on which the State has given
3 notice to the Attorney General that the State in-
4 tends to bring such proceeding; or

5 (2) if the Attorney General is diligently pros-
6 ecuting, or has diligently prosecuted or settled, a
7 proceeding pertaining to such alleged breach.

8 In any proceeding described in paragraph (2) that is
9 brought by the Attorney General a State may intervene
10 as a matter of right.

11 (c) REMEDIES.—In any proceeding described in sub-
12 section (b)—

13 (1) the remedies available shall be those de-
14 scribed in section 231(b); and

15 (2) no civil penalty shall be imposed if any
16 State is diligently prosecuting, or has already dili-
17 gently prosecuted or settled, a proceeding described
18 in subsection (b) pertaining to such alleged breach
19 seeking any civil penalty.

20 (d) SINGLE BREACH.—For purposes of this section,
21 conduct arising out of the same transaction or occurrence,
22 or a related series of transactions or occurrences, that
23 breaches any obligation under the Protocol shall be consid-
24 ered to be part of a single breach.

1 **SEC. 233. PRIVATE ENFORCEMENT OF PROTOCOL.**

2 (a) IN GENERAL.—A participating manufacturer
3 may seek a declaration of the rights and obligations of
4 the manufacturer under the Protocol by filing an action
5 pursuant to section 2201 of title 28, United States Code.

6 (b) CIVIL ACTION.—A participating manufacturer
7 may bring a civil action against another participating
8 manufacturer to enforce, or restrain breaches of, the Pro-
9 tocol by such other participating manufacturer, except
10 that—

11 (1) no such action may be commenced or main-
12 tained if the Secretary is diligently prosecuting, or
13 has diligently prosecuted or settled, a proceeding
14 pertaining to such alleged breach;

15 (2) no such action may seek—

16 (A) monetary relief if any State is already
17 diligently prosecuting, or has already diligently
18 prosecuted or settled, a proceeding pertaining
19 to such alleged breach seeking any civil penalty;
20 or

21 (B) injunctive relief in any State that is al-
22 ready diligently prosecuting, or has already dili-
23 gently prosecuted or settled, a proceeding per-
24 taining to such alleged breach seeking injunc-
25 tive relief; and

1 (3) the court, in any such action, shall restrain
 2 conduct in breach of the Protocol and order specific
 3 performance of the obligations set forth in the Pro-
 4 tocol, and may award damages up to the amount of
 5 profits lost by reason of the breach by the partici-
 6 pating manufacturer bringing such action.

7 (c) SINGLE BREACH.—For purposes of this section,
 8 conduct arising out of the same transaction or occurrence,
 9 or a related series of transactions or occurrences, that
 10 breaches any obligation under the Protocol shall be consid-
 11 ered to be part of a single breach.

12 (d) RIGHT OF INTERVENTION.—In any proceeding
 13 described in section 231(a) or 232(a), any participating
 14 manufacturer may intervene as a matter of right.

15 **SEC. 234. REMOVAL.**

16 Chapter 89 of title 28, United States Code, is amend-
 17 ed by adding at the end the following:

18 **“§ 1453. Removal of state actions regarding tobacco**
 19 **products**

20 “Any action described in section 231, 232, or 242
 21 of the PROTECT Act that is brought in State court may
 22 be removed by any defendant to the Federal court for the
 23 district or division embracing the location in which such
 24 action was brought, except that this section will not apply
 25 where the alleged violation arises from conduct—

1 “(1) solely within the territorial boundaries of
2 the State bringing such action; and

3 “(2) not associated with or part of a pattern or
4 course of conduct involving any similar acts or omis-
5 sions in any other State.”.

6 **Subtitle B—Consent Decrees**

7 **SEC. 241. CONSENT DECREES.**

8 (a) REQUIREMENT.—To be eligible to receive pay-
9 ments under title V, a State, to be eligible to receive liabil-
10 ity protections under subtitle C, a tobacco manufacturer,
11 and to be eligible to receive any benefits under this Act,
12 a representative of the members of the class certified for
13 purposes of *Dianne Castano v. American Tobacco Com-*
14 *pany*, shall enter into consent decrees under this section
15 to be effective on the date of enactment of this Act.

16 (b) TERMS AND CONDITIONS.—

17 (1) IN GENERAL.—The terms and conditions
18 contained in the consent decrees described in sub-
19 section (a) shall contain provisions to clarify the ap-
20 plication and requirements of this Act (and the
21 amendments made by this Act), and the Protocol,
22 including, but not limited to, provisions relating to—

23 (A) restrictions on tobacco product adver-
24 tising and marketing and youth access to such
25 products;

1 (B) the termination, establishment, and
2 operation of trade associations;

3 (C) restrictions on tobacco lobbying;

4 (D) the disclosure of tobacco smoke con-
5 stituents;

6 (E) the disclosure of nontobacco ingredi-
7 ents found in tobacco products;

8 (F) the disclosure of existing and future
9 documents relating to health, toxicity, and ad-
10 diction related to tobacco product usage;

11 (G) the obligation of manufacturers to
12 make payments for the benefit of States, pri-
13 vate litigants and the general public;

14 (H) the obligation of manufacturers to
15 interact only with distributors and retailers that
16 operate in compliance with the applicable provi-
17 sions of Federal, State, or local law regarding
18 the marketing and sale of tobacco products;

19 (I) requirements for warnings, labeling,
20 and packaging of tobacco products;

21 (K) the dismissal of pending litigation as
22 required under title VII and as agreed to by the
23 parties to the decree; and

24 (L) any other matter determined appro-
25 priate by the Secretary or the parties involved.

1 (2) LIMITATIONS.—The terms and conditions
2 contained in the consent decrees described in sub-
3 section (a) shall not contain provisions relating to—

4 (A) tobacco product design, performance,
5 or modification;

6 (B) manufacturing standards and good
7 manufacturing practices;

8 (C) testing and regulation with respect to
9 toxicity and ingredients approval; and

10 (D) the national goals relating to percent-
11 age reductions in the underage use of tobacco
12 products for a year under section 5.

13 (3) WAIVER OF CONSTITUTIONAL CLAIMS.—The
14 terms and conditions contained in the consent de-
15 crees described in subsection (a) shall include a pro-
16 vision waiving the Federal or State constitutional
17 claims of the parties and providing for the severabil-
18 ity of the provisions of the decree.

19 (4) CONSTRUCTION.—The terms and conditions
20 contained in the consent decrees described in sub-
21 section (a) shall provide that the terms of the decree
22 will be construed in a manner that is consistent with
23 the provision of this Act.

1 (c) APPROVAL.—To be valid under this section, the
2 provisions of a consent decree must be approved by the
3 Attorney General prior to approval or entry by a court.

4 (d) ENFORCEMENT.—

5 (1) CHANGES IN LAW.—The provisions of a
6 consent decree entered under this section shall re-
7 main in effect and enforceable regardless of whether
8 the provisions of this Act are amended, except that
9 any amendments to this Act that—

10 (A) establish Federal requirements that
11 are in conflict with obligations contained in the
12 consent decrees shall render such obligations
13 unenforceable;

14 (B) require allocations of funds that are in
15 conflict with the allocation contained in the con-
16 sent decrees shall render such consent decree
17 allocation unenforceable; and

18 (C) require warnings, labeling, or packag-
19 ing that conflicts with the warning, labeling, or
20 packaging requirements of the consent decree,
21 shall require that modifications be made in the
22 consent decree to conform with such amend-
23 ments.

24 (2) BY STATE.—

1 (A) IN GENERAL.—A State may bring an
 2 action to enforce the provisions of any consent
 3 decree under this section in any appropriate
 4 State court. Such proceedings may seek injunc-
 5 tive relief only and may not seek criminal or
 6 monetary sanctions. Enforcement of any injunc-
 7 tive relief provided under a State action under
 8 this section shall be permitted under any appli-
 9 cable State law.

10 (B) CONSISTENCY.—The Attorney General
 11 shall promulgate regulations to ensure the con-
 12 sistency of State court ruling with respect to
 13 conduct under a consent decree that is not ex-
 14 clusively local in nature.

15 **SEC. 242. STATE ENFORCEMENT OF CONSENT DECREES.**

16 (a) IN GENERAL.—Subject to subsections (b) and (c),
 17 a State may bring in its own name and within its jurisdic-
 18 tion proceedings for the enforcement, or to restrain viola-
 19 tions of, the terms of a consent decree described in section
 20 241 that is entered into by that State.

21 (b) INJUNCTIVE RELIEF.—A proceeding described in
 22 subsection (a) shall be limited to injunctive relief only and
 23 may not seek or impose criminal or monetary relief if
 24 criminal or monetary relief may be imposed for the subse-

1 quent violation of any injunction that is entered in an ac-
 2 tion described in subsection (a).

3 (c) INTERPRETATION.—In any proceeding described
 4 in subsection (a), the meaning of this Act and the Protocol
 5 shall control the interpretation of the corresponding terms
 6 of the consent decree, and such terms shall be interpreted
 7 in a manner identical to the interpretation given the cor-
 8 responding terms of this Act and the Protocol.

9 **SEC. 243. NON-PARTICIPATING MANUFACTURERS.**

10 (a) IN GENERAL.—With respect to a manufacturer
 11 that elects not to enter into a consent decree under section
 12 241, such manufacturer shall not be eligible to receive the
 13 liability protections under subtitle C.

14 (b) IMPOSITION OF FEE.—

15 (1) IN GENERAL.—A manufacturer shall be
 16 subject to an annual fee as established under this
 17 subsection unless such manufacturer enters into con-
 18 sent decrees as provided for in section 241 and be-
 19 comes a signatory to the Protocol under section 201.

20 (2) AMOUNT.—

21 (A) TOTAL.—The total amount of all fees
 22 established under this subsection for a year
 23 shall be equal to the amount of fees to be paid
 24 by manufacturers under section 102 for the
 25 year involved.

1 (B) PER MANUFACTURER.—The Secretary
2 shall promulgate regulations for the purpose of
3 assessing fees under this subsection and deter-
4 mining the amount of the fee to be assessed to
5 each manufacturer which shall be based on the
6 market share of each such manufacturer.

7 (c) SETTLEMENT RESERVE FUND.—

8 (1) IN GENERAL.—Each nonparticipating man-
9 ufacturer to which subsection (b)(1) applies shall an-
10 nually deposit into an escrowed reserve fund an
11 amount equal to 150 percent of the amount that
12 such manufacturer would have paid under section
13 102 for the year in which the manufacturer is mak-
14 ing such deposit if the manufacturer had been a sig-
15 natory to the Protocol under section 201.

16 (2) USE.—Amounts contained in the reserve
17 fund of a manufacturer under paragraph (1) shall
18 be used solely for tobacco-related liability payments.
19 The manufacturer may reclaim any amounts remain-
20 ing in the fund (with interest) at the end of the 35-
21 year period beginning on the date on which such
22 fund is established.

1 **Subtitle C—Liability Provisions**

2 **CHAPTER 1—GENERAL PROVISIONS**

3 **SEC. 251. DEFINITIONS.**

4 In this subtitle:

5 “(1) FINAL JUDGMENT.—The term “final judgment” means a judgment on which all rights of appeal or discretionary review have been exhausted or waived or for which the time to appeal or seek such discretionary review has expired.

10 “(2) FINAL SETTLEMENT.—The term “final settlement” means a settlement agreement that is executed and approved as necessary to be fully binding on all relevant parties.

14 “(3) INDIVIDUAL CLAIM.—The term “individual claim” means a claim for relief that is based on the death of, injury to, or loss of consortium of a single individual and that is brought directly by such individual or by the estate or natural heirs of such individual.

20 “(4) THIRD-PARTY PAYOR.—The term “third-party payor” means any person, including an insurance company or health and welfare plan, who claims to have paid money or incurred a debt as a result of injury to another person, except that such term shall not include the heirs or survivors of a sin-

1 gle individual with respect to an injury to such indi-
 2 vidual.

3 **CHAPTER 2—IMMUNITY AND LIABILITY**
 4 **FOR PAST CONDUCT**

5 **SEC. 255. APPLICATION OF CHAPTER.**

6 (a) IN GENERAL.—This chapter shall apply to the en-
 7 forcement of all judgments and settlements with respect
 8 to tobacco claims maintained against participating manu-
 9 facturers.

10 (b) LIMITATION ON ENFORCEMENT.—A judgment or
 11 settlement concerning any tobacco claim described in sub-
 12 section (a) that is not a final judgment or final settlement
 13 as of the effective date of this Act shall not be enforced
 14 by any court except in accordance with this chapter.

15 (c) GENERAL PROHIBITION.—

16 (1) IN GENERAL.—No obligation to pay any
 17 amount under a judgment or settlement to which
 18 this chapter applies shall arise, nor shall a lien, at-
 19 tachment, garnishment or other means of collecting
 20 or securing payment under any such judgment or
 21 settlement issue, become operative, or be enforced,
 22 except as provided for in this chapter.

23 (2) REQUIREMENT OF STATEMENT.—A judg-
 24 ment to which this chapter applies that requires a
 25 monetary payment shall not be issued or entered un-

1 less such judgment contains a statement, on the face
 2 of the judgment, of the following:

3 “Satisfaction of this judgment is subject to
 4 the requirements of the PROTECT Act.”.

5 (3) ENFORCEMENT.—A judgment to which this
 6 chapter applies that does not contain the statement
 7 required under paragraph (2) shall not be valid or
 8 enforceable.

9 (4) APPEAL.—The posting of a bond or the ap-
 10 plication of any form of penalty or enhanced interest
 11 may not be required in connection with the appeal
 12 of any judgment to which this chapter applies.

13 **SEC. 256. GENERAL IMMUNITY.**

14 (a) STATE ATTORNEY GENERAL ACTIONS.—

15 (1) PENDING ACTIONS.—Health-related civil ac-
 16 tions that have been commenced by a State or local
 17 governmental entity, or on behalf of such an entity,
 18 against a manufacturer that is a signatory to the
 19 National Tobacco Control Protocol under section
 20 201 and that are pending on the date of enactment
 21 of this Act are terminated.

22 (2) FUTURE ACTIONS.—A manufacturer that is
 23 a signatory to the National Tobacco Control Proto-
 24 col under section 201 shall be immune from any civil
 25 action commenced after the date of enactment of

1 this Act by a Federal, State, or local governmental
2 entity, or on behalf of such an entity, for all health-
3 related claims arising from the use of a tobacco
4 product.

5 (b) OTHER ACTIONS.—

6 (1) CLASS ACTIONS.—

7 (A) PENDING ACTIONS.—Class actions for
8 claims arising from the use of a tobacco prod-
9 uct that are pending against a manufacturer
10 that is a signatory to the National Tobacco
11 Control Protocol under section 201, are termi-
12 nated.

13 (B) FUTURE ACTIONS.—A manufacturer
14 that is a signatory to the National Tobacco
15 Control Protocol under section 201 shall be im-
16 mune from any class action commenced after
17 the date of enactment of this Act for all claims
18 arising from the use of a tobacco product.

19 (2) ADDICTION AND DEPENDENCE CLAIMS.—

20 (A) PENDING ACTIONS.—Any civil action
21 for claims based on addiction to or dependence
22 on a tobacco product that are pending against
23 a manufacturer that is a signatory to the Na-
24 tional Tobacco Control Protocol under section
25 201, are terminated.

1 (B) FUTURE ACTIONS.—A manufacturer
2 that is a signatory to the National Tobacco
3 Control Protocol under section 201 shall be im-
4 mune from any civil action commenced after the
5 date of enactment of this Act for all claims
6 based on addiction to or dependence on a to-
7 bacco product.

8 (c) PRESERVATION.—All personal injury claims aris-
9 ing from the use of a tobacco product by an individual
10 shall be preserved.

11 **SEC. 257. CIVIL LIABILITY FOR PAST CONDUCT.**

12 (a) APPLICATION.—The provisions of this section
13 shall apply to all civil actions permitted under section 256
14 for relief arising from the conduct of a manufacturer that
15 is a signatory to the National Tobacco Control Protocol
16 under section 201 that occurred prior to the date of enact-
17 ment of this Act.

18 (b) PUNITIVE DAMAGES PROHIBITED.—No punitive
19 damages shall be awarded in any claim described in sub-
20 section (a).

21 (c) INDIVIDUAL TRIALS.—No class action suits, join-
22 der of parties, aggregation of claims, consolidation of ac-
23 tions, extrapolations, or other devices to resolve cases
24 other than on the basis of individual actions shall be per-
25 mitted without the consent of the defendant. Any defend-

1 ant, in an action that involves a violation of this sub-
 2 section, may remove such action to an appropriate Federal
 3 court.

4 (d) JOINT SHARING AGREEMENT.—As part of the
 5 National Tobacco Control Protocol under section 201, all
 6 signatories shall agree to the joint sharing of any civil li-
 7 ability for actions for damages arising from the use of to-
 8 bacco products. Such signatories shall not be jointly and
 9 severally liable for damages involving nonsignatories. Ac-
 10 tions involving both signatories and nonsignatories shall
 11 be severed.

12 (e) PERMISSIBLE PARTIES.—

13 (1) PLAINTIFFS.—The following individuals
 14 may be plaintiffs in a civil action to which this sec-
 15 tion applies:

16 (A) Individuals bringing claims, or claims
 17 derivative of such claims, on their own behalf
 18 for a tobacco-related injury, or the heirs of such
 19 individuals.

20 (B) Third-party payors for claims not
 21 based on subrogation that were pending on
 22 June 9, 1997.

23 (C) Third-party payors for claims based on
 24 subrogation of individual claims permitted
 25 under subparagraph (A).

1 (2) DEFENDANTS.—This section shall apply
2 only to actions brought against a signatory of the
3 National Tobacco Control Protocol under section
4 201, a successor or assign of such a signatory, any
5 future fraudulent transferees, or any entity for suit
6 designated to survive a defunct signatory. Such sig-
7 natories shall be vicariously liable for the actions of
8 their agents.

9 (f) REMOVAL.—Except as provided in subsection (c),
10 there shall be no removal of an action to which this section
11 applies.

12 (g) DISCOVERY.—The development, after the date of
13 enactment of this Act, of any tobacco product that reduces
14 the risk of injury or illness to a user shall not be admissi-
15 ble or discoverable.

16 (h) LIMITATION ON ENFORCEMENT.—

17 (1) IN GENERAL.—A judgment or settlement
18 concerning any tobacco claim in a civil action per-
19 mitted under section 256 that is not a final judg-
20 ment or final settlement as of the effective date of
21 this Act shall not be enforced by any court except
22 in accordance with this section.

23 (2) OBLIGATIONS.—No obligation to pay any
24 amount under a judgment or settlement to which
25 this section applies shall arise, nor shall a lien, at-

1 tachment, garnishment or other means of collecting
2 or securing payment under any such judgment or
3 settlement issue, become operative, or be enforced,
4 except to the extent that the Secretary of the Treas-
5 ury certifies that the requirements of subsection (i)
6 have been met.

7 (3) REQUIREMENT OF STATEMENT.—A judg-
8 ment to which this section applies that requires a
9 monetary payment shall not be issued or entered un-
10 less such judgment contains a statement, on the face
11 of the judgment, of the following:

12 “Satisfaction of this judgment is subject to
13 the requirements of section 257 of the PRO-
14 TECT Act.”.

15 (4) ENFORCEMENT.—A judgment to which this
16 section applies that does not contain the statement
17 required under paragraph (3) shall not be valid or
18 enforceable.

19 (5) APPEAL.—The posting of a bond or the ap-
20 plication of any form of penalty or enhanced interest
21 may not be required in connection with the appeal
22 of any judgment to which this section applies.

23 (i) PROCEDURES FOR COLLECTION OF JUDGMENT.—

24 (1) CERTIFICATION.—A participating manufac-
25 turer shall not make, or be required to make, any

1 monetary payment with respect to any judgment or
2 settlement to which this section applies unless the
3 Attorney General acting as Trustee—

4 (A) certifies that the requirements of para-
5 graph (2) have been met with respect to such
6 payment; and

7 (B) publishes such certification in the Fed-
8 eral Register.

9 (2) FILING WITH ATTORNEY GENERAL.—

10 (A) BY PARTY CLAIMING ENTITLEMENT.—

11 Any party claiming an entitlement to monetary
12 payment under a final judgment or final settle-
13 ment of a tobacco claim to which this section
14 applies shall register such claim with the Attor-
15 ney General acting as Trustee by filing a true
16 and correct copy of the final judgment or final
17 settlement agreement with the Attorney General
18 and providing a copy of such filing to all other
19 parties to the judgment or settlement.

20 (B) OF PAYMENT.—Any party making a
21 payment described in this subsection shall cer-
22 tify such payment to the Attorney General by
23 filing a true and correct copy of the instrument
24 of payment and a statement of the remaining
25 unpaid portion, if any, of the final judgment or

1 final settlement involved with the Attorney Gen-
 2 eral and providing a copy of such filing to all
 3 other parties to the judgment or settlement.

4 (3) DETERMINATIONS.—Not later than 30 days
 5 after the date of which the Attorney General receives
 6 a registration of a claim under paragraph (2)(A) the
 7 Attorney General shall determine whether payment
 8 of such claim is permitted under this section. If the
 9 Attorney General determines that such claim is pay-
 10 able under this section, the Secretary shall certify
 11 such claim.

12 (4) PAYMENT.—Subject to the limitations con-
 13 tained in subsection (j), a participating manufac-
 14 turer to which a claim that is certified under para-
 15 graph (3) applies, shall make payment on such claim
 16 not later than 1 year after the date of such certifi-
 17 cation.

18 (j) LIMITATIONS.—

19 (1) AGGREGATE ANNUAL CAP.—With respect to
 20 a calendar year, the aggregate amount of all tobacco
 21 claims judgments or settlements to which this sec-
 22 tion applies, that the signatories of the National To-
 23 bacco Control Protocol under section 201 shall be
 24 required to pay, shall not exceed an amount equal to
 25 33 percent of the annual fee payments required of

1 all such signatories under section 102 for the year
2 involved. The Attorney General, based on certifi-
3 cations issued under subsection (i)(3) shall make de-
4 terminations with respect to the amounts of pay-
5 ments to be made in a calendar year.

6 (2) PAYMENT OF EXCESS.—If the amount of
7 the judgments and settlements described in para-
8 graph (1) exceed an amount equal to 33 percent of
9 the annual fee payments required under section 102
10 for the year involved, such excess amount shall be
11 paid in the following year.

12 (3) EFFECT OF SETTLEMENT.—The signatories
13 described in paragraph (1) shall receive a credit, to
14 be applied against the amount owed by such signato-
15 ries to the National Tobacco Settlement Trust Fund
16 under section 102 for the year involved, in an
17 amount equal to 80 percent of the aggregate
18 amounts paid under judgments or settlements of to-
19 bacco-related claims to which this section applies for
20 such year.

21 (5) INDIVIDUAL CAP.—With respect to an ac-
22 tion to which this section applies, any amount
23 awarded in excess of \$1,000,000 may be paid in the
24 year following the year in which the judgment or
25 settlement was entered, except that this paragraph

1 shall not apply if all other awards under judgments
2 or settlements entered in the first year can be paid
3 without exceeding the aggregate annual cap under
4 paragraph (1). Such excess amount shall carry over
5 from year to year with no payments in any single
6 year exceeding \$1,000,000 and no interest accruing
7 on such amounts until such time as the annual ag-
8 gregate cap is not exceeded.

9 (k) DEFENSE COSTS.—The signatories of the Na-
10 tional Tobacco Control Protocol under section 201 shall
11 be responsible for the payment of all attorneys' fees and
12 other costs associated with being a defendant in an action
13 to which this section applies.

14 **SEC. 258. CIVIL LIABILITY FOR FUTURE CONDUCT.**

15 (a) APPLICATION.—The provisions of this section
16 shall apply to all civil actions permitted under section 256
17 for relief arising from the conduct of a manufacturer that
18 is a signatory to the National Tobacco Control Protocol
19 under section 201 that occurs after the date of enactment
20 of this Act.

21 (b) GENERAL PROVISIONS.—The provisions of sub-
22 sections (c) and (e) through (i) of section 256 shall apply
23 to actions under this section.

1 (c) **THIRD-PARTY PAYOR CLAIMS.**—Third-party
2 payor claims that are not based on subrogation shall not
3 be commenced under this section.

4 **SEC. 259. NON-PARTICIPATING MANUFACTURERS.**

5 The provisions of this title shall not apply to any
6 manufacturer that—

7 (1) is not a signatory to the National Tobacco
8 Control Protocol under section 201; and

9 (2) is at least 12 months delinquent in the pay-
10 ment of amounts under section 102.

11 **SEC. 260. PAYMENT OF JUDGMENTS AND SETTLEMENTS.**

12 (a) **IN GENERAL.**—Notwithstanding sections 1257,
13 1738 and 2283 of title 28, United States Code, or any
14 doctrine of abstention or principle of res judicata or collat-
15 eral estoppel, a participating manufacturer may commence
16 an action in a district court of the United States to enjoin
17 any State court proceeding to enforce or execute any judg-
18 ment or settlement that is unenforceable under this chap-
19 ter. Such an action shall be deemed a civil action arising
20 under the laws of the United States for purposes of section
21 1331 of title 28, United States Code, and may be com-
22 menced in the district court of the United States for the
23 district and division embracing the place where the State
24 court proceeding is pending.

1 (b) INJUNCTIONS.—Upon a demonstration by the
 2 participating manufacturer in an action under subsection
 3 (a) that the judgment or settlement that is the subject
 4 of such action is unenforceable under this chapter, the
 5 court shall issue an injunction against the enforcement of
 6 such judgment or settlement and may order such other
 7 relief as is appropriate.

8 **SEC. 261. STATE ELIGIBILITY.**

9 (a) REQUIREMENT FOR STATE LAW.—To be eligible
 10 to receive funds under subtitle A of title V, a State shall—

11 (1) have in effect a State law that provides
 12 that—

13 (A) sections 256 through 259 shall be the
 14 law of the State and shall be binding in all pro-
 15 ceedings in any court or tribunal in the State
 16 without limitation, notwithstanding any other
 17 provision of law, court decision, rule or practice;
 18 and

19 (B) any defendant in a civil action to
 20 which this Act applies shall have a right of
 21 prompt interlocutory appeal to the highest court
 22 of the State to enforce the requirements of the
 23 State law; and

24 (2) have withdrawn and dismissed with preju-
 25 dice any claim required to be dismissed by the State

1 under this chapter within 60 days of the effective
2 date of this Act.

3 (b) CERTIFICATION.—Not later than 6 months after
4 the effective date of this Act, and annually thereafter, the
5 Attorney General shall certify that each State that is eligi-
6 ble to receive funds under subtitle A of title V has com-
7 plied with the requirements of this section. A State shall
8 not be eligible for such funds prior to being certified under
9 this subsection.

10 (c) EFFECT OF NONENACTMENT OF LAW.—

11 (1) IN GENERAL.—With respect to a State that
12 does not comply with subsection (a)(1), no tobacco
13 claim that is otherwise maintainable under this
14 chapter shall be maintained in any court of that
15 State.

16 (2) APPLICATION OF LAW.—Until such time as
17 the State complies with subsection (a)(1), any to-
18 bacco claim that is otherwise maintainable under
19 this chapter that is asserted under the law of, or in
20 the courts of, such State shall be deemed to arise
21 under this section and shall be subject to the provi-
22 sions of this chapter, and the substantive rules of
23 decision for such claim shall otherwise be derived
24 from the law of the State that would have been ap-
25 plicable but for the operation of this subsection.

1 **SEC. 262. REMOVAL.**

2 Chapter 89 of title 28, United States Code, (as
3 amended by section 234) is further amended by adding
4 at the end the following:

5 **“§ 1454. Removal of certain actions relating to to-**
6 **bacco products**

7 “(a) LIMITATION.—A civil action in any State court
8 that is maintainable under chapter 1 of subtitle C of title
9 I of the PROTECT Act shall not be removed to a district
10 court of the United States except as provided for in this
11 section.

12 “(b) REMOVAL PERMITTED.—

13 “(1) AGREEMENT OF PARTIES.—A civil action
14 maintainable under chapter 1 of subtitle C of title
15 I of the PROTECT Act may be removed at any time
16 prior to judgment to the district court of the United
17 States for the district and division embracing the
18 place where such action is pending if all plaintiffs
19 and all defendants consent in writing to such re-
20 moval.

21 “(2) PARTICIPATING MANUFACTURER.—A civil
22 action that a defendant reasonably contends is being
23 conducted in a manner inconsistent with the terms
24 of chapter 1 of subtitle C of title II of the PRO-
25 TECT Act may be removed by such defendant to
26 the district court of the United States for the dis-

1 trict and division embracing the place where such
 2 action is pending, if the removing defendant is a
 3 participating manufacturer as defined in section 5 of
 4 such Act.

5 “(c) JURISDICTION.—In any action removed pursu-
 6 ant to subsection (b), the district court shall have jurisdic-
 7 tion over such action to the full extent permitted under
 8 the Constitution.

9 “(d) NOTICE.—The notice of removal of a civil action
 10 under subsection (b)(2) shall be filed not later than 30
 11 days after the receipt by the removing defendant of an
 12 order or ruling that such defendant reasonably contends
 13 is inconsistent with the terms of chapter 1 of subtitle C
 14 of title II of the PROTECT Act.

15 “(e) DETERMINATIONS BY DISTRICT COURT.—In a
 16 civil action removed under subsection (b)(2), if the district
 17 court determines—

18 “(1) that the action was being conducted in a
 19 manner inconsistent with the terms of chapter 1 of
 20 subtitle C of title II of the PROTECT Act, the dis-
 21 trict court shall—

22 “(A) order that the action be dismissed
 23 without prejudice; or

24 “(B) enter such other orders as may be
 25 necessary to bring the action into conformity

1 with such chapter and retain jurisdiction over
2 any claim or claims as necessary to serve the
3 interests of justice and the requirements of the
4 PROTECT Act;

5 “(2) that the action was being conducted in a
6 manner consistent with the terms of such chapter
7 but that the defendant removing the action had a
8 reasonable basis to seek removal under this section,
9 the district court shall retain jurisdiction over any
10 claim or claims as may be necessary to serve the in-
11 terests of justice and the requirements of the PRO-
12 TECT Act; or

13 “(3) that the defendant removing the action
14 had no reasonable basis for contending that such ac-
15 tion was being conducted in a manner inconsistent
16 with the terms of such chapter, the district court
17 shall remand the case to the State court from which
18 it was removed.

19 “(f) REVIEWABILITY OF ORDER.—An order remand-
20 ing an action to a State court under subsection (e) shall
21 be reviewable by appeal or otherwise.

22 “(h) MISCELLANEOUS.—For purposes of this sec-
23 tion—

24 “(1) the parties in controversy shall be consid-
25 ered to be of diverse citizenship unless all plaintiffs

1 (including all members of any plaintiff class) and all
 2 defendants are citizens of the same State;

3 “(2) a corporation shall be considered to be a
 4 citizen only of the State of its incorporation; and

5 “(3) there shall be no requirement of a mini-
 6 mum amount in controversy.

7 “(i) APPLICATION OF CERTAIN PROCEDURES.—The
 8 procedures described in sections 1446(a), 1446(d), and
 9 1447(a) through (c) shall be applicable to an action re-
 10 moved under this section.”.

11 **SEC. 263. CONFORMING AMENDMENTS.**

12 Title 11, United States Code, is amended—

13 (1) in section 362(b)—

14 (A) in paragraph (17), by striking “or” at
 15 the end;

16 (B) in paragraph (18), by striking the pe-
 17 riod and inserting “; or”; and

18 (C) by inserting after paragraph (18), the
 19 following:

20 “(19) under subsection (a) of this section, of
 21 the commencement or continuation of any action or
 22 other proceeding by a participating manufacturer
 23 (as defined in section 5 of the PROTECT Act) re-
 24 garding any interest or obligation arising under or
 25 directly related to a liability apportionment agree-

1 ment entered into in accordance with chapter 1 of
2 subtitle C of title II of the PROTECT Act.”;

3 (2) in section 365—

4 (A) in subsection (a), by striking “and
5 (d)” and inserting “(d), and (p)”; and

6 (B) by adding at the end the following:

7 “(p) The trustee may not reject, shall be deemed to
8 have assumed as of the commencement of the case, and
9 shall cause the debtor to perform on an executory contract
10 of a participating manufacturer (as defined in section 5
11 of the PROTECT Act) to the extent such executory con-
12 tract is directly related to a liability apportionment agree-
13 ment entered into in accordance with chapter 1 of subtitle
14 C of title II of the PROTECT Act.”;

15 (3) in section 507(a), by adding at the end the
16 following:

17 “(10) Tenth, any unsecured claim of a partici-
18 pating tobacco product manufacturer (as defined in
19 section 5 of the PROTECT Act) that arises under
20 or is directly related to a liability apportionment
21 agreement entered into in accordance with chapter 1
22 of subtitle C of title II of the PROTECT Act.”;

23 (4) in section section 541(b)—

24 (A) in paragraph (4), by striking “or” at
25 the end;

1 (B) in paragraph (5), by striking the pe-
 2 riod and inserting “; or”; and

3 (C) by inserting after paragraph (5), the
 4 following:

5 “(6) any interest of the debtor in property to
 6 the extent that the debtor has transferred or agreed
 7 to transfer such interest pursuant to a liability ap-
 8 portionment agreement entered into in accordance
 9 with chapter 1 of subtitle C of title II of the PRO-
 10 TECT Act or any written agreement directly related
 11 to such liability apportionment agreement.”; and

12 (5) in subsection 1141—

13 (A) in subsection (a), by striking “and
 14 (d)(3)” and inserting “, (d)(3), and (d)(5)”;

15 (B) in subsection (a), by striking “and
 16 (d)(3)” and inserting “, (d)(3), and (d)(5)”;
 17 and

18 (C) in subsection (d), by adding at the end
 19 the following:

20 “(5) The confirmation of a plan does not discharge
 21 a debtor from any debt or other obligation arising under
 22 or directly related to a liability apportionment agreement
 23 entered into in accordance with chapter 1 of subtitle C
 24 of title II of the PROTECT Act.”.

1 **TITLE III—REDUCTION IN**
 2 **UNDERAGE TOBACCO USE**
 3 **Subtitle A—State Laws Regarding**
 4 **the Sale of Tobacco Products to**
 5 **Minors**

6 **SEC. 300. SHORT TITLE.**

7 This subtitle may be cited as the “Tobacco Use by
 8 Minors Prevention Act”.

9 **SEC. 301. STATE LAWS REGARDING SALE OF TOBACCO**
 10 **PRODUCTS TO INDIVIDUALS UNDER THE AGE**
 11 **OF 18.**

12 (a) **ELIGIBILITY.—**

13 (1) **IN GENERAL.**—Subject to paragraph (2),
 14 for fiscal year 1999 and each subsequent fiscal year
 15 a State shall not be eligible for payments under sub-
 16 title A of title V if that State does not have in effect
 17 a State law with the provisions contained in the
 18 model State law described in section 302.

19 (2) **DELAYED APPLICABILITY FOR CERTAIN**
 20 **STATES.**—In the case of a State whose legislature
 21 does not convene a regular session in fiscal year
 22 1999, the requirement described in paragraph (1)
 23 shall apply only for fiscal year 2000 and subsequent
 24 fiscal years.

1 (b) ENFORCEMENT.—For the first applicable fiscal
2 year and for each subsequent fiscal year, a State shall—

3 (1) enforce the law described in subsection
4 (a)(1) systematically and conscientiously and in a
5 manner that can reasonably be expected to reduce
6 the extent to which tobacco products are available to
7 individuals under the age of 18;

8 (2) certify that the State requires such enforce-
9 ment of such law to be treated as a priority by State
10 and local law enforcement authorities;

11 (3) conduct random, unannounced inspections
12 to ensure compliance with the law described in sub-
13 section (a)(1); and

14 (4) annually submit to the Trustees a report
15 describing—

16 (A) the activities carried out by the State
17 to enforce such law during the fiscal year pre-
18 ceding the fiscal year for which the State is
19 seeking the grant;

20 (B) the steps taken by the State to ensure
21 that enforcement of such law was treated as a
22 priority by State and local law enforcement au-
23 thorities;

24 (C) the extent of success the State has
25 achieved in reducing the availability of tobacco

1 products to individuals under the age of 18, in-
2 cluding the results of the inspections conducted
3 under paragraph (1); and

4 (D) the strategies to be utilized by the
5 State for enforcing such law during the fiscal
6 year for which the grant is sought.

7 (c) FUNDING.—The law specified in subsection (a)(1)
8 may be administered and enforced by a State using—

9 (1) any amounts made available to the State
10 under subtitle A of title V;

11 (2) any fees collected for licenses issued pursu-
12 ant to the law described in subsection (a)(1);

13 (3) any fines or penalties assessed for violations
14 of the law specified in subsection (a)(1); or

15 (4) any other funding source that the legisla-
16 ture of the State may prescribe by statute.

17 (d) NONCOMPLIANCE OF STATE.—Before making a
18 payment under subtitle A of title V to a State for the first
19 applicable fiscal year or any subsequent fiscal year, the
20 Trustees, in consultation with the Secretary, shall make
21 a determination whether the State has maintained compli-
22 ance with subsections (a) and (b). If, after notice to the
23 State and an opportunity for a hearing, the Trustees de-
24 termines that the State is not in compliance with such
25 subsections, the Trustees shall reduce the amount of the

1 State payment under such subtitle for the fiscal year in-
 2 volved by an amount equal to—

3 (1) in the case of the first applicable fiscal year,
 4 10 percent of the amount determined under subtitle
 5 A of title V;

6 (2) in the case of the first fiscal year following
 7 such applicable fiscal year, 20 percent of the amount
 8 determined under such sections for the State for the
 9 fiscal year;

10 (3) in the case of the second such fiscal year,
 11 30 percent of the amount determined under such
 12 sections for the State for the fiscal year; and

13 (4) in the case of the third such fiscal year or
 14 any subsequent fiscal year, 40 percent of the amount
 15 determined under such sections for the State for the
 16 fiscal year.

17 (e) WAIVER AND MODIFICATION.—

18 (1) IN GENERAL.—A State may request that
 19 the Secretary waive, or permit the modification of,
 20 any provision or provisions of the model State law
 21 described in section 302.

22 (2) REQUIREMENTS.—The Secretary shall
 23 grant a request for a waiver or modification under
 24 paragraph (1) unless the Secretary determines
 25 that—

1 (A) the State has not demonstrated that
 2 the State has enacted laws that implement re-
 3 quirements that are comparable to the require-
 4 ments of all of the elements of the model State
 5 law under section 302; or

6 (A) the cumulative effect of granting all of
 7 such waivers or modifications with respect to
 8 the State would render the youth anti-tobacco
 9 laws and marketing systems of the State to be
 10 ineffective.

11 (f) DEFINITION.—For purposes of this section, the
 12 term “first applicable fiscal year” means—

13 (1) fiscal year 2000, in the case of any State
 14 described in subsection (a)(2); and

15 (2) fiscal year 1999, in the case of any other
 16 State.

17 **SEC. 302. MODEL STATE LAW.**

18 The model State law described in this section with
 19 respect to a State is the following:

20 **“SECTION 1. DISTRIBUTION TO MINORS.**

21 “(a) IN GENERAL.—No person shall distribute a to-
 22 bacco product to an individual under 18 years of age. A
 23 person who violates this subsection is liable for—

24 “(1) a civil money penalty of \$100 for the first
 25 violation of this subsection;

1 “(2) a civil money penalty of \$200 for a second
2 violation of this subsection; and

3 “(3) a civil money penalty of \$500 for a third
4 and subsequent violation of this subsection.

5 “(b) EMPLOYERS.—The employer of an employee
6 who has violated subsection (a) more than once while in
7 the employ of the employer is liable for a civil money pen-
8 alty of \$250 for each violation by such employee. An em-
9 ployer who pays a civil money penalty under this sub-
10 section shall not, for purposes of section 10, be considered
11 as having violated this Act.

12 “(c) DEFENSES.—It shall be a defense to a charge
13 brought under subsection (a) that—

14 “(1) the defendant—

15 “(A) relied upon proof of age that ap-
16 peared on its face to be valid, or

17 “(B) had complied with the requirements
18 of section 7, or

19 “(2) the individual to whom the tobacco prod-
20 uct was distributed was at the time of the distribu-
21 tion employed in violation of section 8(b).

22 “(d) ENFORCEMENT.—A person who violates sub-
23 section (a) shall not be liable for a civil money penalty
24 unless the individual who received the tobacco product is
25 proceeded against under section 2(a), except that such a

1 person shall be liable for such penalty if such individual
2 was not proceeded against because such individual was
3 testing compliance with this Act under section 8(b).

4 **“SEC. 2. PURCHASE, RECEIPT, OR POSSESSION BY MINORS**
5 **PROHIBITED.**

6 “(a) IN GENERAL.—An individual under 18 years of
7 age shall not purchase or attempt to purchase, receive or
8 attempt to receive, possess or attempt to possess, smoke
9 or attempt to smoke, or otherwise use or consume or at-
10 tempt to use or consume a tobacco product in a public
11 place. An individual who violates this subsection is liable
12 for a civil money penalty of not less than \$25 and not
13 more than \$150 for each violation and shall be subject
14 to suspension of the individual’s authorization to operate
15 a motor vehicle. Upon the second or subsequent violation
16 of this subsection, the authorization of such individual to
17 operate a motor vehicle shall be suspended for a period
18 of not less than 30 days and such individual shall be re-
19 quired to perform community service.

20 “(b) NOTICE.—A law enforcement agency, upon de-
21 termining that an individual under 18 years of age alleg-
22 edly purchased, received, possessed, smoked, or otherwise
23 used or attempted to purchase, receive, possess, smoke,
24 or otherwise use, a tobacco product in violation of sub-
25 section (a) shall notify the individual’s parent or parents,

1 custodian, or guardian as to the nature of the violation
2 if the name and address of a parent, guardian, or custo-
3 dian is reasonably ascertainable by the law enforcement
4 agency. The notice required by this subsection shall be
5 made not later than 48 hours after the individual who al-
6 legedly violated subsection (a) is cited by such agency for
7 the violation. The notice may be made by any means rea-
8 sonably calculated to give prompt actual notice, including
9 notice in person, by telephone, or by first-class mail.

10 “(c) EMPLOYMENT.—Subsection (a) does not pro-
11 hibit an individual under the age of 18 from possessing
12 a tobacco product during regular working hours and in
13 the course of such individual’s employment if the tobacco
14 product is not possessed for such individual’s consump-
15 tion.

16 **“SEC. 3. SIGNAGE.**

17 “It shall be unlawful for any person who sells tobacco
18 products over-the-counter to fail to post conspicuously a
19 sign communicating that—

20 “(1) the sale of tobacco products to individuals
21 under the age of 18 is prohibited by law,

22 “(2) the purchase of tobacco products by indi-
23 viduals under the age of 18 is prohibited by law, and

24 “(3) proof of age may be demanded.

1 A person who fails to post a sign in violation of this section
2 is liable for a civil money penalty of \$250 for each viola-
3 tion.

4 **“SEC. 4. SAMPLING.**

5 “It shall be unlawful for any person to distribute to-
6 bacco product samples in any face-to-face transaction
7 without first procuring, from any prospective purchaser or
8 recipient who appears to be under the age of 18, proof
9 of age establishing that such prospective purchaser or re-
10 cipient is 18 years of age or older. A person who violates
11 this section is liable for a civil money penalty of \$250 for
12 each violation. This section does not apply to distributions
13 of tobacco products in an area or establishment that indi-
14 viduals under the age of 18 are not permitted to enter.

15 **“SEC. 5. OUT-OF-PACKAGE DISTRIBUTION.**

16 “It shall be unlawful for any person to distribute
17 cigarettes or smokeless tobacco products other than in an
18 unopened package originating with the manufacturer that
19 bears the health warning required by Federal law. A per-
20 son who distributes a cigarette or smokeless tobacco prod-
21 uct in violation of this section is liable for a civil money
22 penalty of \$250 for each violation.

23 **“SEC. 6. DISPLAYS.**

24 “(a) GENERAL RULE.—It shall be unlawful for any
25 person who sells tobacco products to maintain packages

1 of such products in any display or storage configuration
2 which affords customers direct access to such packages.

3 “(b) PENALTY.—Any person who violates subsection
4 (a) is liable for a civil money penalty of \$250 for each
5 violation.

6 **“SEC. 7. NOTIFICATION OF EMPLOYEES.**

7 “(a) NOTICE TO EMPLOYEES.—Within 180 days of
8 the effective date of this Act, every person engaged in the
9 business of distributing tobacco products at retail shall im-
10 plement a program to notify each employee employed by
11 that person who distributes tobacco products that this
12 Act—

13 “(1) prohibits the distribution of tobacco prod-
14 ucts to any individual under 18 years of age and the
15 purchase, receipt, possession, smoking, or other use
16 or consumption of tobacco products by any individ-
17 ual under 18 years of age,

18 “(2) prohibits out-of-package distribution of
19 cigarettes and smokeless tobacco products, and

20 “(3) permits a defense to a charge of distribu-
21 tion of a tobacco product to an individual under 18
22 years of age based on evidence that the defendant
23 relied upon proof of age that appeared on its face
24 to be valid.

1 Any employer failing to provide the required notice to any
2 employee shall be liable for a civil money penalty of \$250
3 for each violation.

4 “(b) STATEMENT.—It shall be a defense to a charge
5 that an employer violated subsection (a) of this section
6 that the employee acknowledged receipt, either in writing
7 or by electronic means, of a statement in substantially the
8 following form:

9 “I understand that State law prohibits the distribu-
10 tion of tobacco products to individuals under 18
11 years of age and out-of-package distribution of ciga-
12 rettes and smokeless tobacco products and permits
13 a defense based on evidence that a prospective pur-
14 chaser’s proof of age was reasonably relied upon and
15 appeared on its face to be valid. I understand that
16 if I sell, give, or voluntarily provide tobacco products
17 to an individual under the age of 18, I may be found
18 responsible for a civil money penalty for each viola-
19 tion. I promise to comply with this law.”

20 “(c) VICARIOUS LIABILITY.—If an employer is
21 charged with a violation of subsection (a) and the em-
22 ployer uses as a defense to such charge the defense pro-
23 vided by subsection (b), the employer shall be deemed to
24 be liable for such violation if such employer pays the pen-

1 alty imposed on the employee involved in such violation
2 or in any way reimburses the employee for such penalty.

3 **“SEC. 8. RANDOM UNANNOUNCED INSPECTIONS; REPORT-**
4 **ING; AND COMPLIANCE.**

5 “(a) ENFORCEMENT AND INSPECTION.—The State
6 Police of a State, or such local law enforcement authority
7 duly designated by the State Police, shall enforce this Act
8 in a manner that can reasonably be expected to reduce
9 the extent to which tobacco products are distributed to
10 individuals under 18 years of age and shall conduct ran-
11 dom, unannounced inspections in accordance with the pro-
12 cedures set forth in this Act and in regulations issued
13 under section 301 of the PROTECT Act to ensure compli-
14 ance with this Act.

15 “(b) USE OF INDIVIDUALS UNDER 18.—The State
16 may engage an individual under 18 years of age to test
17 compliance with this Act, except that such an individual
18 may be used to test compliance with this Act only if the
19 testing is conducted under the following conditions:

20 “(1) Prior to use of any individual under the
21 age of 18 years in a random, unannounced inspec-
22 tion, written consent shall be obtained from such in-
23 dividual’s parents or legal guardian.

1 “(2) An individual under 18 years of age shall
2 act solely under the supervision and direction of the
3 State during a random, unannounced inspection.

4 “(3) An individual under 18 years of age used
5 in random, unannounced inspections shall not be
6 used in any such inspection at a store in which such
7 individual is a regular customer.

8 “(4) If an individual under 18 years of age par-
9 ticipating in random, unannounced inspections is
10 questioned about such individual’s age, such person
11 shall state such individual’s actual age and shall
12 present a true and correct proof of age if requested
13 at any time during the inspection to present it.

14 “(c) PENALTY.—Any person who uses any person
15 under 18 years of age, other than as permitted by sub-
16 section (b), to test compliance with this Act, is liable for
17 a civil money penalty of \$250 for each violation.

18 “(d) USE OF PENALTY MONEY AND FEES.—Civil
19 money penalties collected for violations of this Act and
20 fees collected under section 9 may only be used to defray
21 the costs of administration and enforcement of this Act.

22 **“SEC. 9. LICENSURE.**

23 “(a) IN GENERAL.—The State shall require that each
24 person engaged in the distribution of tobacco products
25 hold a license issued under this section. A separate license

1 shall be required for each place of business where tobacco
2 products are distributed at retail. A license issued under
3 this section is not assignable and is valid only for the per-
4 son in whose name it is issued and for the place of busi-
5 ness designated in the license.

6 “(b) FEE.—The annual license fee shall be not less
7 than \$500 for each place of business where tobacco prod-
8 ucts are distributed at retail.

9 “(c) APPLICATION.—Every application for a license,
10 including renewal of a license, under this section shall be
11 made upon a form provided by the State and shall set
12 forth the name under which the applicant transacts or in-
13 tends to transact business, the location of the place of
14 business for which the license is to be issued, the street
15 address to which all notices relevant to the license are to
16 be sent (in this Act referred to as ‘notice address’), and
17 any other identifying information that the State may re-
18 quire.

19 “(d) ACTION ON LICENSE.—The State shall issue or
20 renew a license or deny an application for a license or the
21 renewal of a license within 30 days of receiving a properly
22 completed application and the license fee. The State shall
23 provide notice to an applicant of action on an application
24 denying the issuance of a license or refusing to renew a
25 license.

1 “(e) SCOPE AND RENEWAL.—Every license issued by
2 the State shall be valid for 1 year from the date of issu-
3 ance and shall be renewed upon application except as oth-
4 erwise provided in this Act.

5 “(f) CHANGE OF ADDRESS.—Upon notification of a
6 change of address for a place of business for which a li-
7 cense has been issued, a license shall be reissued for the
8 new address without the filing of a new application.

9 “(g) NOTICE.—The State shall notify every person
10 in the State who is engaged in the distribution at retail
11 of tobacco products of the license requirement of this sec-
12 tion and of the date by which such person should have
13 obtained a license.

14 “(h) PENALTY.—

15 “(1) IN GENERAL.—Any person who engages in
16 the distribution at retail of tobacco products without
17 a license required by this section is liable for a civil
18 money penalty in an amount equal to two times the
19 applicable license fee and \$100 for each day on
20 which such distribution continues without a license.

21 “(2) SUSPENSION OR REVOCATION.—Any per-
22 son who engages in the distribution at retail of to-
23 bacco products after a license issued under this sec-
24 tion has been suspended or revoked is liable for a
25 civil money penalty of \$250 per day for each day on

1 which such distribution continues after the date such
2 person received notice of such suspension or revoca-
3 tion.

4 “(i) TERM.—The term of a license shall be 1 year.

5 “(j) EFFECTIVE DATE.—No person shall engage in
6 the distribution at retail of tobacco products on or after
7 180 days after the date of enactment of this Act unless
8 the person is authorized to do so by a license issued pursu-
9 ant to this section or is an employee or agent of a person
10 who has been issued such a license.

11 **“SEC. 10. SUSPENSION, REVOCATION, DENIAL, AND NON-**
12 **RENEWAL OF LICENSES.**

13 “(a) NOTICE.—Upon a finding that a licensee has
14 been determined by a court of competent jurisdiction to
15 have violated this Act during the license term, the State
16 shall notify the licensee in writing, served personally or
17 by registered mail at the notice address, that any subse-
18 quent violation of this Act at the same place of business
19 may result in an administrative action to suspend the li-
20 cense for a period determined by the State.

21 “(b) SUSPENSION.—Upon finding that a further vio-
22 lation by the licensee has occurred involving the same
23 place of business for which the license was issued and the
24 licensee has been provided notice under subsection (a), the
25 State may initiate an administrative action to suspend the

1 license for a period to be determined by the State. If an
2 administrative action to suspend a license is initiated, the
3 State shall immediately notify the licensee in writing at
4 the notice address of the initiation of the action and the
5 reasons therefore and permit the licensee an opportunity,
6 at least 30 days after written notice is served personally
7 or by registered mail upon the licensee, to show why sus-
8 pension of the license would be unwarranted or unjust.

9 “(c) REVOCATION.—The State may initiate an ad-
10 ministrative action to revoke a license that previously has
11 been suspended under subsection (b) if, during the one
12 year period in which the license was issued, a further vio-
13 lation of this Act is committed after the suspension by
14 the licensee involving the same place of business for which
15 the license was issued. If an administrative action to re-
16 voke a license is initiated, the State shall immediately no-
17 tify the licensee in writing at the notice address of the
18 initiation of the action and the reasons therefore and per-
19 mit the licensee an opportunity, at least 30 days after
20 written notice is served personally or by registered mail
21 upon the licensee, to show why revocation of the license
22 would be unwarranted or unjust.

23 “(d) OTHER VIOLATIONS.—No action with respect to
24 any license at a place of business may be taken based on
25 a violation that occurred subsequent to the occurrence of

1 another violation unless such other violation is fully adju-
2 dicated at the time the subsequent violation occurred.

3 “(e) FEE.—A person whose license has been sus-
4 pended or revoked with respect to a place of business pur-
5 suant to this section shall pay the State a fee of \$1,000
6 for the renewal or reissuance of the license at that same
7 place of business.

8 “(f) EFFECT ON APPLICATION FOR NEW LICENSE.—
9 Revocation of a license under subsection (c) with respect
10 to a place of business shall not be grounds to deny an
11 application by that person for a new license with respect
12 to that place of business for more than 12 months subse-
13 quent to the date of such revocation. Revocation or sus-
14 pension of a license with respect to a particular place of
15 business shall not be the grounds to deny an application
16 for a new license, to refuse to renew a license, or to revoke
17 or suspend an existing license at another place of business.

18 “(g) JUDICIAL REVIEW.—A licensee may seek judi-
19 cial review of an action of the State suspending, revoking,
20 denying, or refusing to renew a license under this section
21 by filing a complaint in a court of competent jurisdiction.
22 A complaint shall be filed within 30 days after the date
23 on which notice of the action is received by the licensee.
24 The court shall review the evidence de novo.

1 “(h) REPORT.—The State shall not report any action
2 suspending, revoking, denying, or refusing to renew a li-
3 cense under this section to the Secretary of Health and
4 Human Services, unless judicial review, if any, of the ac-
5 tion has been completed.

6 **“SEC. 11. PREEMPTION.**

7 “(a) IN GENERAL.—The provisions of this Act shall
8 not preempt any provisions of State or local law that pro-
9 vide greater restrictions than those required in this Act
10 so long as such State or local laws do not conflict with
11 regulations issued under section 910 of the Federal Food,
12 Drug and Cosmetic Act.

13 “(b) FOOD AND DRUG ADMINISTRATION.—Nothing
14 in this Act shall be construed to prohibit the Secretary
15 of Health and Human Services from regulating tobacco
16 products under chapter IX of the Federal Food, Drug,
17 and Cosmetic Act.

18 **“SEC. 12. SEVERABILITY.**

19 “‘If any provision of this Act or its application to any
20 person or circumstance is held invalid, such holding shall
21 not affect other provisions or applications of this Act that
22 can be given effect without the invalid application.

1 **“SEC. 13. NO PRIVATE RIGHT OF ACTION.**

2 “Nothing in this Act shall be construed to create a
3 right of action by any private person for any violation of
4 any provision of this Act.

5 **“SEC. 14. JURISDICTION AND VENUE.**

6 “Any action alleging a violation of this Act may only
7 be brought in a court of general jurisdiction in the city
8 or county where the violation is alleged to have occurred.

9 **“SEC. 15. REPORT.**

10 “The State shall prepare for submission annually to
11 the Secretary of Health and Human Services a report on
12 the State’s reporting of compliance with this title and any
13 implementing regulations promulgated by the Secretary.

14 **“SEC. 16. DEFINITIONS.**

15 “For purposes of this Act:

16 “(1) DIRECT ACCESS.—The term ‘direct access’
17 means the ability of a customer to obtain physically
18 a package of tobacco products without the interven-
19 tion of an employee of the establishment.

20 “(2) PACKAGE.—The term ‘package’ means a
21 pack, box, carton, pouch, or container of any kind
22 in which cigarettes or smokeless tobacco products
23 are offered for sale, sold, or otherwise distributed to
24 consumers.

25 “(3) PROOF OF AGE.—The term ‘proof of age’
26 means a driver’s license or other form of identifica-

1 tion issued by a governmental authority or other
2 identification that includes a photograph and the
3 date of birth of the individual.

4 “(4) SAMPLE.—The term ‘sample’ means a to-
5 bacco product distributed to members of the public
6 at no cost for the purpose of promoting the product,
7 but excludes tobacco products distributed—

8 “(A) in conjunction with the sale of other
9 tobacco products,

10 “(B) to consumer or market research pan-
11 els,

12 “(C) to persons employed in the trade, or

13 “(D) to customers or consumers in re-
14 sponse to customer or consumer complaints.

15 “(5) TOBACCO PRODUCT.—The term ‘tobacco
16 product’ means—

17 “(A) ‘tobacco products’ as defined in sec-
18 tion 5 of the PROTECT Act; or

19 “(B) any other product containing tobacco
20 as a principal ingredient which, because of its
21 appearance, type, or tobacco used in the prod-
22 uct, or its packaging and labeling, is likely to
23 be offered to, or purchased by, consumers as a
24 tobacco product as described in subparagraph
25 (A).”.

1 **Subtitle B—Required Reduction in**
2 **Underage Usage**

3 **SEC. 311. PURPOSE.**

4 It is the purpose of this subtitle to encourage the
5 achievement of dramatic and immediate reductions in the
6 number of underage consumers of tobacco products
7 through the imposition of substantial financial surcharges
8 on participating manufacturers if certain underage to-
9 bacco-use reduction targets are not met.

10 **SEC. 312. DETERMINATION OF UNDERAGE USE BASE PER-**
11 **CENTAGES.**

12 (a) CIGARETTES.—For purposes of this section, the
13 underage use base percentage for cigarettes shall be a per-
14 centage determined by the Secretary, weighted by the rel-
15 ative population of the age groups involved as determined
16 using data compiled in 1995 by the Bureau of the Census,
17 based on—

18 (1) the average of the percentages of 12th grad-
19 ers (individuals who are 16 or 17 years of age) who
20 used cigarette products on a daily basis for each of
21 the calendar years 1986 through 1996;

22 (2) the average of the percentages of 10th grad-
23 ers (individuals who are 14 or 15 years of age) who
24 used cigarette products on a daily basis for each of
25 the calendar years 1991 through 1996; and

1 (3) the average of the percentages of 8th grad-
2 ers (individuals who are 13 years of age) who used
3 cigarette products on a daily basis for each of the
4 calendar years 1991 through 1996.

5 (b) SMOKELESS TOBACCO.—For purposes of this sec-
6 tion, the underage use base percentage for smokeless to-
7 bacco products shall be a percentage determined by the
8 Secretary, weighted by the relative population of the age
9 groups involved as determined using data compiled in
10 1995 by the Bureau of the Census, based on—

11 (1) the average of the percentages of 12th grad-
12 ers (individuals who are 16 or 17 years of age) who
13 used smokeless tobacco products on a daily basis in
14 1996;

15 (2) the average of the percentages of 10th grad-
16 ers (individuals who are 14 or 15 years of age) who
17 used smokeless tobacco products on a daily basis in
18 1996; and

19 (3) the average of the percentages of 8th grad-
20 ers (individuals who are 13 years of age) who used
21 smokeless tobacco products on a daily basis in 1996.

22 (c) USE OF CERTAIN DATA OR METHODOLOGY.—For
23 purposes of determining the percentages under para-
24 graphs (1) through (3) of subsections (a) and (b), the Sec-
25 retary shall use the data contained in the National High

1 School Drug Use Survey entitled Monitoring the Future
2 by the University of Michigan or such other comparable
3 index, as determined appropriate by the Secretary after
4 notice and an opportunity for a hearing, that utilizes
5 methodology identical to that used by the University of
6 Michigan in such survey.

7 **SEC. 313. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF**
8 **TOBACCO PRODUCTS.**

9 (a) ANNUAL DETERMINATION.—Not later than the
10 expiration of the 5-year period beginning on the date of
11 enactment of this Act, and annually thereafter, the Sec-
12 retary shall determine the average annual incidence of the
13 daily use of tobacco products by individuals who are under
14 18 years of age.

15 (b) CIGARETTES.—With respect to cigarette prod-
16 ucts, a determination under subsection (a) for a year shall
17 be based on the percentage, as weighted by the relative
18 population of the age groups involved as determined using
19 data compiled in 1995 by the Bureau of the Census, of—

20 (1) 12th graders (individuals who are 16 or 17
21 years of age) who used cigarette products on a daily
22 basis during the year involved;

23 (2) 10th graders (individuals who are 14 or 15
24 years of age) who used cigarette products on a daily
25 basis during the year involved; and

1 (3) 8th graders (individuals who are 13 years
2 of age) who used cigarette products on a daily basis
3 during the year involved.

4 (c) SMOKELESS TOBACCO.—With respect to smoke-
5 less tobacco products, a determination under subsection
6 (a) for a year shall be based on the percentage, as weight-
7 ed by the relative population of the age groups involved
8 as determined using data compiled in 1995 by the Bureau
9 of the Census, of—

10 (1) 12th graders (individuals who are 16 or 17
11 years of age) who used smokeless tobacco products
12 on a daily basis during the year involved;

13 (2) 10th graders (individuals who are 14 or 15
14 years of age) who used smokeless tobacco products
15 on a daily basis during the year involved; and

16 (3) 8th graders (individuals who are 13 years
17 of age) who used cigarette smokeless tobacco on a
18 daily basis during the year involved.

19 (d) USE OF CERTAIN DATA OR METHODOLOGY.—

20 (1) IN GENERAL.—For purposes of determining
21 the percentages under paragraphs (1) through (3) of
22 subsections (b) and (c), the Secretary shall use the
23 data contained in the National High School Drug
24 Use Survey entitled Monitoring the Future by the
25 University of Michigan (if such survey is still being

1 undertaken) or such other comparable index, as de-
 2 termined appropriate by the Secretary after notice
 3 and an opportunity for a hearing, that utilizes meth-
 4 odology identical to that used by the University of
 5 Michigan in such survey.

6 (2) ALTERATION OF METHODOLOGY.—If the
 7 Secretary determines that the methodology used by
 8 the University of Michigan in the survey referred to
 9 in paragraph (1) has been altered in a material
 10 manner from the methodology used during the pe-
 11 riod from 1986 to 1996 (including by altering States
 12 or regions on which the survey is based), the Sec-
 13 retary, after notice and an opportunity for a hear-
 14 ing, shall use percentages based on an index devel-
 15 oped by the Secretary that utilizes methodology
 16 identical to that used by the University of Michigan
 17 in such survey.

18 **SEC. 314. REQUIRED REDUCTION IN UNDERAGE TOBACCO**
 19 **USE.**

20 (a) IN GENERAL.—For purposes of assessing sur-
 21 charges under section 315, the Secretary shall determine
 22 whether the required percentage reduction in the underage
 23 use of tobacco products for a year (based on the tables
 24 contained in subsection (b)) has been achieved for the year
 25 involved. Such determination shall be based on—

1 (1) with respect to cigarette products, the aver-
2 age annual incidence of the daily use of tobacco
3 products by individuals who are under 18 years of
4 age for the year involved (as determined under sec-
5 tion 313(b)) as compared to the underage use base
6 percentage for cigarette products (as determined
7 under section 312(a)); and

8 (2) with respect to smokeless tobacco products,
9 the average annual incidence of the daily use of
10 smokeless tobacco products by individuals who are
11 under 18 years of age for the year involved (as de-
12 termined under section 313(c)) as compared to the
13 underage use base percentage for smokeless tobacco
14 products (as determined under section 312(b)).

15 (b) PERCENTAGE REDUCTION IN UNDERAGE USE OF
16 TOBACCO PRODUCTS.—For purposes of subsection (a),
17 the required percentage reduction in the underage use of
18 tobacco products with respect to each tobacco product
19 shall be determined based on the national goals for the
20 reduction in underage tobacco use under section 4.

21 **SEC. 315. APPLICATION OF SURCHARGES.**

22 (a) IN GENERAL.—If the Secretary determines that
23 the percentage reduction in the underage use of tobacco
24 products for a year has not been achieved as required
25 under section 314, the Secretary shall impose a surcharge

1 on the participating manufacturers of the tobacco prod-
 2 ucts involved.

3 (b) AMOUNT OF SURCHARGE.—

4 (1) IN GENERAL.—

5 (A) CIGARETTES.—With respect to ciga-
 6 rettes, the amount of any surcharge to be im-
 7 posed under this section for a calendar year
 8 shall be equal to—

9 (i) with respect to each of the first 5
 10 calendar years to which this section ap-
 11 plies, the product of—

12 (I) \$100,000,000, and the num-
 13 ber of applicable surcharge percentage
 14 points as determined under subsection
 15 (c) up to 5 percentage points;

16 (II) \$200,000,000, and the num-
 17 ber of applicable surcharge percentage
 18 points as determined under subsection
 19 (c), if such percentage points are
 20 greater than 5 but less than 11 per-
 21 centage points; and

22 (III) \$300,000,000, and the
 23 number of applicable surcharge per-
 24 centage points as determined under
 25 subsection (c), if such percentage

1 points are 11 or more percentage
2 points; and

3 (ii) with respect to calendar years suc-
4 ceeding the period referred to in subpara-
5 graph (A), the product of—

6 (I) \$250,000,000, and the num-
7 ber of applicable surcharge percentage
8 points as determined under subsection
9 (c) up to 5 percentage points; and

10 (II) \$500,000,000, and the num-
11 ber of applicable surcharge percentage
12 points as determined under subsection
13 (c), if such percentage points are 5 or
14 more percentage points.

15 (B) SMOKELESS TOBACCO.—With respect
16 to smokeless tobacco, the amount of any sur-
17 charge to be imposed under this section for a
18 calendar year shall be equal to—

19 (i) with respect to each of the first 5
20 calendar years to which this section ap-
21 plies, the product of—

22 (I) \$15,000,000, and the number
23 of applicable surcharge percentage
24 points as determined under subsection
25 (c) up to 5 percentage points;

- 1 (II) \$30,000,000, and the num-
2 ber of applicable surcharge percentage
3 points as determined under subsection
4 (c), if such percentage points are
5 greater than 5 but less than 11 per-
6 centage points; and
- 7 (III) \$45,000,000, and the num-
8 ber of applicable surcharge percentage
9 points as determined under subsection
10 (c), if such percentage points are 11
11 or more percentage points; and
- 12 (ii) with respect to calendar years suc-
13 ceeding the period referred to in subpara-
14 graph (A), the product of—
- 15 (I) \$30,000,000, and the number
16 of applicable surcharge percentage
17 points as determined under subsection
18 (c) up to 5 percentage points; and
- 19 (II) \$60,000,000, and the num-
20 ber of applicable surcharge percentage
21 points as determined under subsection
22 (c), if such percentage points are 5 or
23 more percentage points.

1 (2) ADJUSTMENTS.—The amount applicable
2 under paragraph (1) shall be annually adjusted by
3 the Secretary based on—

4 (A) with respect to subparagraph (A) of
5 such paragraph—

6 (i) the proportional percentage in-
7 crease or decrease, as compared to cal-
8 endar year 1995, in the population of indi-
9 viduals residing in the United States who
10 are at least 13 years of age but less than
11 18 years of age;

12 (ii) the proportional percentage in-
13 crease or decrease, as compared to cal-
14 endar year 1996, in the average profit per
15 unit (measured in cents and weighted by
16 annual sales) earned by participating man-
17 ufacturers for the tobacco product involved
18 (as determined by the Secretary through a
19 contract with a nationally recognized ac-
20 counting firm having no connection to such
21 manufacturers); and

22 (B) any methodology utilized to avoid the
23 double counting of underage individuals whose
24 tobacco use has previously resulted in the im-
25 position of a surcharge, limited to the extent that

1 there were not other underage users of tobacco
 2 in such previous years for whom a surcharge
 3 was not paid because of the limitation contained
 4 in section 316.

5 (3) PROFIT PER UNIT.—For purposes of para-
 6 graph (2)(A)(ii), the average profit per unit for cal-
 7 endar 1996 shall be determined using the operating
 8 profit reported by participating manufacturers to the
 9 Securities and Exchange Commission.

10 (4) ANNUAL LIMITATIONS.—The total amount
 11 of surcharges imposed under this section for a cal-
 12 endar year shall not exceed—

13 (A) in the case of cigarettes—

14 (i) \$5,000,000,000 for each of the
 15 years described in paragraph (1)(A)(i); and

16 (ii) \$10,000,000,000 for each of the
 17 years described in paragraph (1)(A)(ii);
 18 and

19 (B) in the case of smokeless tobacco prod-
 20 ucts—

21 (i) \$500,000,000 for each of the years
 22 described in paragraph (1)(B)(i); and

23 (ii) \$1,000,000,000 for each of the
 24 years described in paragraph (1)(B)(ii).

1 (c) DETERMINATION OF APPLICABLE SURCHARGE
2 PERCENTAGE POINTS.—

3 (1) IN GENERAL.—Except as provided in para-
4 graph (2), with respect to a calendar year, the appli-
5 cable surcharge percentage points shall be equal to
6 the percentage point difference between—

7 (A) the required percentage reduction in
8 the underage use of the tobacco product in-
9 volved for the year (based on the tables in sec-
10 tion 314(b)); and

11 (B) the number of percentage points by
12 which the average annual incidence of the daily
13 use of the tobacco products involved by individ-
14 uals who are under 18 years of age for the year
15 (as determined under section 313) is less than
16 the underage use base percentage for such
17 products (as determined under section 312).

18 (2) ADJUSTMENT.—If for any calendar year the
19 Secretary determines that the average annual inci-
20 dence of the daily use of the tobacco products in-
21 volved by individuals who are under 18 years of age
22 (as determined under section 313) is greater than
23 the underage use base percentage for such products
24 (as determined under section 312), the applicable
25 surcharge percentage point shall be equal to—

1 (A) the percentage point amount deter-
 2 mined under paragraph (1)(A); and

3 (B) the number of percentage points by
 4 which the average annual incidence of the daily
 5 use of the tobacco products involved by individ-
 6 uals who are under 18 years of age (as deter-
 7 mined under section 313) is greater than the
 8 underage use base percentage for such products
 9 (as determined under section 312).

10 (3) TYPE OF PRODUCT.—Separate determina-
 11 tions shall be made under this section for cigarette
 12 products and smokeless tobacco products.

13 (d) JOINT AND SEVERAL OBLIGATION.—Any sur-
 14 charge imposed under this section with respect to a to-
 15 bacco product (cigarette products or smokeless tobacco
 16 products) shall be the joint and several obligation of all
 17 participating manufacturers of such product as allocated
 18 by the market share of each such manufacturer with re-
 19 spect to such product. The market share of each manufac-
 20 turer for each such product shall be based on the market
 21 share of such product for the year preceding the year for
 22 which the determination is being made.

23 (e) ASSESSMENT.—Not later than May 1 of each year
 24 in which a surcharge will be imposed under this section,
 25 the Secretary shall assess, pursuant to subsection (d), to

1 each participating manufacturer the amount for which
2 such manufacturer is obligated. Not later than July 1 of
3 any year in which a manufacturer receives an assessment
4 under this section, the manufacturer shall pay such as-
5 sessment in full or be subject to such interest on such
6 amount as the Secretary may by regulation prescribe.

7 (f) USE OF AMOUNTS.—Amounts received under this
8 section shall be used to further the purposes of this Act.

9 (g) PROHIBITION.—No stay or other injunctive relief
10 may be granted by the Secretary or any court that has
11 the effect of enjoining the imposition and collection of the
12 surcharges to be applied under this section.

13 **SEC. 316. ABATEMENT PROCEDURES.**

14 (a) PETITIONS.—Upon payment by a participating
15 manufacturer of the amount assessed to the manufacturer
16 under section 315(f), the manufacturer may submit a peti-
17 tion to the Secretary for an abatement of the assessment.
18 A notice of such abatement petition shall be submitted to
19 the attorney general of each State.

20 (b) HEARING.—The Secretary shall provide for the
21 conduct of a hearing on an abatement petition received
22 under subsection (a) pursuant to the procedures described
23 in sections 554, 556, and 557 of title 5, United States
24 Code. The attorney general of any State shall be permitted

1 to be heard at any hearing conducted under this sub-
2 section.

3 (c) BURDEN.—The burden at any hearing under sub-
4 section (b) shall be on the participating manufacturer to
5 prove, by a preponderance of the evidence, that the manu-
6 facturer should be granted the abatement.

7 (d) BASIS OF DECISION.—Any decision regarding a
8 petition for an abatement under this section shall be based
9 on a determination as to whether—

10 (1) the participating manufacturer has acted in
11 good faith and in full compliance with this Act (and
12 any amendment made by this Act) and any regula-
13 tions or State or local laws promulgated in further-
14 ance of this Act;

15 (2) the participating manufacturer has pursued
16 all reasonably available measures to attain the re-
17 ductions;

18 (3) there is any evidence of any direct or indi-
19 rect action by the participating manufacturer to un-
20 dermine the achievement of the reductions required
21 under section 314 or to undermine any other provi-
22 sion of this Act (or amendment); and

23 (4) the participating manufacturer has taken
24 (or failed to take) any other action as determined
25 appropriate by the Secretary.

1 (e) AMOUNT.—Upon a determination granting an
2 abatement under this section, the Secretary shall order the
3 abatement of any or all of the amount paid by the partici-
4 pating manufacturer (as determined by the Secretary), to-
5 gether with interest that may have accrued on such
6 amount during the period between the date on which pay-
7 ment by the manufacturer was made and the date on
8 which the abatement order was granted. Such interest
9 shall be equal to that provided for the average 52-week
10 Treasury Bill during the period involved.

11 (f) AGGRIEVED PARTIES.—Any participating manu-
12 facturer or attorney general of any State that is aggrieved
13 by an abatement that is granted under this section may
14 seek judicial review of the abatement decision within 30
15 days of the date of such decision in the Court of Appeals
16 for the District of Columbia Circuit. Review in such cases
17 shall be subject to the procedures described in sections
18 701 through 706 of title 5, United States Code.

19 (g) PROHIBITION.—A participating manufacturer
20 may not file a petition under subsection (a) until such time
21 as the manufacturer has fully paid the Secretary the
22 amount assessed to the manufacturer under section
23 315(f).

1 **SEC. 317. INCENTIVE FOR EXCEEDING REDUCTION GOALS.**

2 (a) IN GENERAL.—If the Secretary determines that
 3 the percentage reduction in the underage use of tobacco
 4 products for a year exceeds 60 percent for cigarettes and
 5 45 percent for smokeless tobacco products for a year as
 6 required under section 314, the Secretary shall notify the
 7 Trustees who shall adjust, in accordance with subsection
 8 (b), the amount of the licensing fee that a participating
 9 manufacturer shall be required to pay for such year under
 10 section 102.

11 (b) AMOUNT.—

12 (1) CIGARETTES.—With respect to cigarettes,
 13 the amount of a licensing fee adjustment applicable
 14 to a participating manufacturer under this section
 15 shall be an amount equal to $\frac{1}{80}$ of the amount that
 16 the manufacturer is required to pay for such year
 17 multiplied by the number of percentage points by
 18 which the manufacturer has reduced underage to-
 19 bacco use in excess of the 60 percent reduction re-
 20 quired under section 314.

21 (2) SMOKELESS TOBACCO.—With respect to
 22 smokeless tobacco, the amount of a licensing fee ad-
 23 justment applicable to a participating manufacturer
 24 under this section shall be an amount equal to $\frac{1}{110}$
 25 of the amount that the manufacturer is required to
 26 pay for such year multiplied by the number of per-

1 centage points by which the manufacturer has re-
 2 duced underage tobacco use in excess of the 45 per-
 3 cent reduction required under section 314.

4 (c) PROCEDURES.—The Trustees, in consultation
 5 with the Secretary, shall develop procedures to carry out
 6 this section.

7 **TITLE IV—HEALTH AND SAFETY**
 8 **REGULATION OF TOBACCO**
 9 **PRODUCTS**

10 **SEC. 401. HEALTH AND SAFETY REGULATION OF TOBACCO**
 11 **PRODUCTS.**

12 (a) PROHIBITED ACTS.—Section 301 of the Federal
 13 Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amend-
 14 ed by adding at the end the following:

15 “(x) The introduction or delivery for introduction into
 16 interstate commerce of any tobacco product that does not
 17 comply with the provisions of chapter IX.

18 “(y) The failure by the manufacturer of a tobacco
 19 product to comply with a tobacco product health risk man-
 20 agement standard, a good manufacturing practice stand-
 21 ard, a tobacco product labeling, warning or packaging
 22 standard, or any other requirement of chapter IX.”.

23 (b) DEFINITION.—Section 201(g)(1) of the Federal
 24 Food, Drug, and Cosmetic Act (21 U.S.C. 301(g)(1)) is
 25 amended by striking “; and (D)” and inserting “, includ-

1 ing nicotine-containing tobacco products that do not com-
 2 ply with chapter IX; and (D)’’.

3 (c) INSPECTIONS.—Section 704(a)(1) of the Federal
 4 Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)(1)) is
 5 amended—

6 (1) in subparagraph (A), by striking “or cos-
 7 metics” each place that such appears and inserting
 8 “, cosmetics, or tobacco products”; and

9 (2) in the second sentence, by striking “drugs
 10 or” each place that such appears and inserting
 11 “drugs, tobacco products or”.

12 (d) REGULATION OF TOBACCO PRODUCTS.—The
 13 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
 14 et seq.) is amended—

15 (1) by redesignating chapter IX as chapter X;

16 (2) by redesignating sections 901, 902, 903,
 17 904, and 905 as sections 1001, 1002, 1003, 1004,
 18 and 1005, respectively; and

19 (3) by adding after chapter VIII the following
 20 new chapter:

21 “CHAPTER IX—HEALTH AND SAFETY REGU-
 22 LATORY REQUIREMENTS RELATING TO TO-
 23 BACCO PRODUCTS

24 “SEC. 900. DEFINITIONS.

25 “In this chapter:

1 “(1) CIGARETTE.—The term ‘cigarette’ means
2 any product which contains nicotine, is intended to
3 be burned under ordinary conditions of use, and con-
4 sists of—

5 “(A) any roll of tobacco wrapped in paper
6 or in any substance not containing tobacco; and

7 “(B) any roll of tobacco wrapped in any sub-
8 stance containing tobacco which, because of its ap-
9 pearance, the type of tobacco used in the filler, or
10 its packaging and labeling, is likely to be offered to,
11 or purchased by, consumers as a cigarette described
12 in subparagraph (A).

13 “(2) CIGARETTE TOBACCO.—The term ‘ciga-
14 rette tobacco’ means any product that consists of
15 loose tobacco that contains or delivers nicotine and
16 is intended for use by persons in a cigarette. Unless
17 otherwise stated, the requirements of this title per-
18 taining to cigarettes shall also apply to cigarette to-
19 bacco.

20 “(3) NICOTINE.—The term ‘nicotine’ means the
21 chemical substance named 3-(1-Methyl-2-
22 pyrrolidiny)pyridine or $C_{10}H_{14}N_2$, including any salt
23 or complex of nicotine.”.

24 “(4) SMOKELESS TOBACCO.—The term ‘smoke-
25 less tobacco’ means any product that consists of cut,

1 ground, powdered, or leaf tobacco that contains nico-
 2 tine and that is intended to be placed in the oral
 3 or nasal cavity.

4 “(5) TAR.—The term ‘tar’ means mainstream
 5 total particulate matter minus nicotine and water.

6 “(6) TOBACCO ADDITIVE.—The term ‘tobacco
 7 additive’ means any substance the intended use of
 8 which results or may reasonably be expected to re-
 9 sult, directly or indirectly, in the substance becoming
 10 a component of, or otherwise affecting the character-
 11 istics of, any tobacco product, including any sub-
 12 stance that may have been removed from the tobacco
 13 product and then readded in the substance’s original
 14 or modified form.

15 “(7) TOBACCO PRODUCT.—The term ‘tobacco
 16 product’ means cigarettes and smokeless tobacco
 17 products.

18 **“Subchapter A—Tobacco Product Regulation**

19 **“SEC. 901. STATEMENT OF GENERAL DUTIES.**

20 “As part of the comprehensive health promotion and
 21 disease prevention program established under this chapter
 22 and the PROTECT Act (and the amendments made by
 23 such Act) relating to diseases and conditions associated
 24 with the use of tobacco products, and that places a special

1 emphasis on discouraging the use of such products by
2 young Americans, the Secretary shall—

3 “(1) develop and implement health risk man-
4 agement standards for tobacco products under sec-
5 tion 902;

6 “(2) develop and implement good manufactur-
7 ing practice standards for tobacco products under
8 section 903;

9 “(3) develop and implement tobacco product la-
10 beling, warning, and packaging standards under sec-
11 tion 904;

12 “(4) develop and implement standards that en-
13 courage the development and use of reduced risk to-
14 bacco products under section 905;

15 “(5) develop and implement tobacco product
16 marketing standards under section 906;

17 “(6) establish and oversee a tobacco products
18 scientific advisory committee under section 907 to
19 provide advice on the establishment of tobacco prod-
20 uct marketing standards under section 902, 903,
21 904, and 905; and

22 “(7) submit reports to Congress evaluating the
23 effectiveness of this chapter and the PROTECT Act
24 as described in section 908.

1 **“SEC. 902. TOBACCO PRODUCT HEALTH RISK MANAGE-**
2 **MENT STANDARDS.**

3 “(a) AUTHORITY.—

4 “(1) IN GENERAL.—The Secretary shall by reg-
5 ulation (promulgated under the authority of section
6 701(a) and consistent with the procedures described
7 in section 553 of title 5, United States Code) estab-
8 lish tobacco product health risk standards.

9 “(2) CONSULTATION.—In developing and pro-
10 mulgating regulations under this chapter, the Sec-
11 retary shall consult (as the Secretary determines ap-
12 propriate) with—

13 “(A) the Federal public health and safety
14 officials, including—

15 “(i) the Surgeon General;

16 “(ii) the Director of the Centers for
17 Disease Control and Prevention;

18 “(iii) the Director of the Office on
19 Smoking and Health of the Centers for
20 Disease Control and Prevention;

21 “(iv) the Commissioner of Food and
22 Drugs;

23 “(v) the Director of the National In-
24 stitutes of Health;

25 “(vi) the Director of the National
26 Cancer Institute;

1 “(vii) the Administrator of the Agency
2 for Health Care Policy and Research;

3 “(viii) the Administrator of the Sub-
4 stance Abuse and Mental Health Services
5 Administration;

6 “(ix) the Administrator of the Health
7 Resources and Services Administration;

8 “(x) the Director of the Office of Na-
9 tional Drug Control Policy;

10 “(xi) the Administrator of the Drug
11 Enforcement Agency;

12 “(xii) the Administrator of the Bu-
13 reau of Alcohol, Tobacco, and Firearms;
14 and

15 “(xiii) other Federal public health ex-
16 perts; and

17 “(B) other public health and safety ex-
18 perts, including State and local public health
19 and safety officials, and other interested mem-
20 bers of the public and affected parties.

21 “(b) PROCEDURES FOR THE ESTABLISHMENT OF
22 STANDARDS.—

23 “(1) PUBLICATION OF NOTICE.—

24 “(A) IN GENERAL.—The Secretary shall
25 publish in the Federal Register a notice of pro-

1 posed rulemaking for the establishment, amend-
2 ment, or revocation of any health risk manage-
3 ment standard for a tobacco product under this
4 section. The Secretary may publish an advance
5 notice of proposed rulemaking in order to solicit
6 broad input at an earlier stage in the rule-
7 making process.

8 “(B) CONTENTS OF NOTICE.—A notice of
9 proposed rulemaking for the establishment or
10 amendment of a health risk management stand-
11 ard for a tobacco product shall be accompanied
12 by a justification of the proposed action and
13 shall—

14 “(i) invite interested persons to sub-
15 mit to the Secretary, within 30 days of the
16 publication of the notice, requests for
17 changes in the standard based on new in-
18 formation relevant to the standard; and

19 “(ii) invite interested persons to sub-
20 mit an existing health risk management
21 standard for the tobacco product, including
22 a draft or proposed health risk manage-
23 ment standard, for consideration by the
24 Secretary.

1 “(C) NOTICE OF REVOCATION.—A notice
2 of proposed rulemaking for the revocation of a
3 health risk management standard shall set
4 forth a finding with supporting justification
5 that the health risk management standard is no
6 longer necessary with respect to the tobacco
7 product.

8 “(D) COMMENTS.—The Secretary shall
9 provide for a comment period of not less than
10 60 days after the date on which a notice has
11 been published under this paragraph.

12 “(2) REQUEST FOR CHANGE.—If, after the
13 publication of a notice in accordance with paragraph
14 (1), the Secretary receives a request for a change in
15 the health risk management standard for a tobacco
16 product, the Secretary shall, within 60 days of the
17 publication of the notice, either deny the request or
18 give notice of an intent to initiate such a change.

19 “(3) REGULATION FOR ESTABLISHMENT.—

20 “(A) IN GENERAL.—After the expiration of
21 the period for comment on a notice of proposed
22 rulemaking published under paragraph (1) with
23 respect to a health risk management standard,
24 and after consideration of such comments and
25 any report from the tobacco products advisory

1 committee under section 907, the Secretary
2 shall—

3 “(i) promulgate a regulation establish-
4 ing a health risk management standard
5 and publish in the Federal Register find-
6 ings on the matters referred to in sub-
7 section (b); or

8 “(ii) publish a notice terminating the
9 proceeding for the development of the
10 standard together with the reasons for
11 such termination.

12 “(B) CONTENTS.—A regulation establish-
13 ing a health risk management standard under
14 subparagraph (A) shall set forth the date or
15 dates upon which the standard shall take effect,
16 but no such regulation may take effect before
17 the expiration of the 1-year period beginning on
18 the date of its publication unless the Secretary
19 determines that an earlier effective date is nec-
20 essary for the protection of the public health.
21 Such date or dates shall be established so as to
22 minimize economic loss to, and disruption or
23 dislocation of, domestic and international trade.

24 “(4) AMENDING OR REVOKING OF STAND-
25 ARDS.—

1 “(A) IN GENERAL.—The Secretary, upon
2 the initiative of the Secretary or upon petition
3 of an interested person, may by regulation, pro-
4 mulgated in accordance with the requirements
5 of paragraphs (1), (2), and (3), amend or re-
6 voke a health risk management standard for a
7 tobacco product.

8 “(B) EFFECTIVENESS OF AMENDMENT.—
9 The Secretary may declare a proposed amend-
10 ment of a health risk management standard
11 under this section to be effective on and after
12 its publication in the Federal Register and until
13 the effective date of any final action taken on
14 such amendment if the Secretary determines
15 that making it so effective is in the public inter-
16 est. A proposed amendment of a health risk
17 management standard made so effective under
18 the preceding sentence may not prohibit, during
19 the period in which it is so effective, the intro-
20 duction or delivery for introduction into inter-
21 state commerce of a tobacco product which con-
22 forms to such standard without the change or
23 changes provided by such proposed amendment.

1 “(c) REGULATION OF THE COMPOSITION OF TO-
 2 BACCO PRODUCTS.—Tobacco product health risk manage-
 3 ment standards established under this section shall—

4 “(1) include provisions that are designed to re-
 5 duce the overall health risks to the public based
 6 upon the best available technology, including the re-
 7 duction in risk to the consumers of such products,
 8 individuals who reduce or cease the use of such
 9 products, and individuals who do not initiate the use
 10 of such products;

11 “(2) where necessary to provide a reduction in
 12 the overall health risks of tobacco products to the
 13 public, include requirements—

14 “(A) if technologically and commercially
 15 feasible, with respect to the construction, com-
 16 ponents, constituents, ingredients (including to-
 17 bacco additives), and properties of the product,
 18 including the establishment of levels of nicotine
 19 and other components, ingredients (including
 20 tobacco additives), and constituents of the prod-
 21 uct, or smoke emitted by such products;

22 “(B) specifying the procedures for the test-
 23 ing of such products, including devising proce-
 24 dures to be used by tobacco product manufac-
 25 turers, the Secretary, or other appropriate enti-

1 ties, to measure relevant health-related charac-
2 teristics of such products;

3 “(C) for the testing of such products, in-
4 cluding devising procedures to be used by man-
5 ufacturers, the Secretary, or other appropriate
6 entities to measure the relevant health related
7 characteristics of such products to assess the
8 conformity of such products with the applicable
9 health risk management standards; and

10 “(D) to limit the sale and distribution of
11 tobacco products to the extent authorized by
12 this chapter;

13 “(3) as required under section 904, prescribe
14 certain conditions pertaining to the labeling and ad-
15 vertising of tobacco products.

16 “(4) comply with regulations promulgated by
17 the Secretary that specify the health risk assessment
18 procedures for the testing of tobacco and nontobacco
19 constituents contained in tobacco products and de-
20 terminations concerning such products under sub-
21 section (d).

22 “(5) not later than 3 years after the date of en-
23 actment of this chapter, limit the amount of tar in
24 a cigarette to not more than 12 milligrams, except
25 that nothing in this paragraph shall be construed as

1 limiting the authority of the Secretary to promulgate
 2 regulations further limiting the amount of tar that
 3 may be contained in a cigarette.

4 “(d) TOBACCO PRODUCTS RISK ASSESSMENT
 5 STANDARDS.—

6 “(1) TOBACCO CONSTITUENTS.—The health
 7 risk management standards promulgated under sub-
 8 section (c)(4) with respect to the testing of tobacco
 9 products shall include provisions relating to the as-
 10 sessment of the health risks posed by the compo-
 11 nents of tobacco, including nicotine and tar, and by
 12 tobacco use including carbon-monoxide.

13 “(2) NONTOBACCO INGREDIENTS.—

14 “(A) IN GENERAL.—The health risk man-
 15 agement regulations under subsection (c)(4)
 16 with respect to the testing of nontobacco ingre-
 17 dients used in tobacco products—

18 “(i) during the 5-year period begin-
 19 ning on the date of enactment of this chap-
 20 ter, this paragraph shall only apply to new
 21 ingredients (those ingredients that were
 22 not previously used in such products on
 23 such date of enactment) used in such prod-
 24 ucts; and

1 “(ii) after the expiration of the 5-year
2 period described in clause (i), this section
3 shall apply to all ingredients used in such
4 products.

5 “(B) IMPLEMENTATION.—In carrying out
6 this section, all requirements with respect to
7 nontobacco ingredients, substances, and com-
8 pounds shall be implemented in accordance with
9 subparagraph (A).

10 “(3) HEALTH RISK ASSESSMENTS.—

11 “(A) REQUIREMENT.—Not later than 5
12 years after the date of enactment of this chap-
13 ter, and annually thereafter, each manufacturer
14 shall submit to the Secretary a health risk as-
15 sessment for each ingredient, substance, or
16 compound that is listed under subsection
17 (e)(1)(A) with respect to each brand of tobacco
18 product manufactured by each such manufac-
19 turer.

20 “(B) AVAILABILITY OF NEW INFORMA-
21 TION.—The Secretary may include in the regu-
22 lations promulgated under this section, provi-
23 sions that permit manufacturers to, in subse-
24 quent years, revise information that was sub-
25 mitted under subparagraph (A) in previous

1 years if new data becomes available to that
2 manufacturer. Such regulations may require
3 that a manufacturer submit a simple notifica-
4 tion to the Secretary where the manufacturer
5 determines that no new data has become avail-
6 able during the previous year.

7 “(C) JOINT SUBMISSION.—At the discre-
8 tion of the Secretary, the health risk assess-
9 ments under this paragraph may be conducted
10 by qualified third party organizations on behalf
11 of more than 1 manufacturer for 1 or more
12 product or ingredient, substance or compound if
13 a joint submission is consistent with the public
14 health.

15 “(D) BASIS OF ASSESSMENT.—The health
16 risk assessment of an ingredient, substance, or
17 compound described in subparagraph (A)
18 shall—

19 “(i) be based on the best scientific evi-
20 dence available at the time of the submis-
21 sion of the assessment; and

22 “(ii) ascertain whether there is a rea-
23 sonable certainty in the minds of com-
24 petent scientists that the ingredient, sub-
25 stance, or compound is not harmful in the

quantities used under the intended conditions of use.

“(4) REGULATORY ACTION.—

“(A) ABSENCE OF A RISK ASSESSMENT.—

Not later than 12 months after the date of enactment of this chapter and subject to the requirements of paragraphs (1) and (3)(A), the Secretary shall promulgate regulations to prohibit the use of any ingredient, substance, or compound in the tobacco product of a manufacturer if no health risk assessment has been submitted as required under this subsection by the manufacturer for the ingredient, substance, or compound.

“(B) REVIEW OF HEALTH RISK ASSESSMENTS.—

“(i) GENERAL REVIEW.—Not later than 90 days after the receipt of a health risk assessment under this subsection, the Secretary shall review the findings contained in such assessment.

“(ii) APPROVAL, CONDITIONAL APPROVAL, OR DISAPPROVAL.—The Secretary shall approve or disapprove of, or condition, the use of the ingredient, substance,

1 or compound that was the subject of the
2 assessment under this subsection within
3 120 days after the completion of a review
4 under clause (i) and provide notice to the
5 manufacturer of such action.

6 “(iii) GENERAL APPLICABILITY.—At
7 the discretion of the Secretary, the ap-
8 proval, conditional, approval, or dis-
9 approval of a particular ingredient, sub-
10 stance, or compound under clause (ii) may
11 by regulation be made generally applicable
12 to tobacco product manufacturers or a sub-
13 group of such manufacturers. In the case
14 of a conditional approval, the Secretary
15 shall develop a procedure to enable manu-
16 facturers to certify that the condition will
17 be complied with.

18 “(iv) INACTION BY SECRETARY.—If
19 the Secretary fails to act with respect to
20 an assessment during the period referred
21 to in clause (ii), the safety of the ingredi-
22 ent, substance, or compound involved shall
23 be deemed to be approved with respect to
24 the manufacturer submitting the assess-
25 ment until such time as the succeeding an-

1 nual risk assessment is submitted by the
2 manufacturer or a review is completed.

3 “(e) ANNUAL SUBMISSION.—

4 “(1) IN GENERAL.—Each manufacturer of a to-
5 bacco product shall annually provide the Secretary
6 with—

7 “(A) a list of all ingredients, substances,
8 and compounds (other than tobacco, water or
9 reconstituted tobacco sheet made wholly from
10 tobacco) that are added in the manufacture of
11 the tobacco product, for each brand of tobacco
12 product so manufactured;

13 “(B) a description of the quantity of the
14 ingredients, substances, and compounds that
15 are listed under subparagraph (A) with respect
16 to each brand of tobacco product;

17 “(C) a description of the nicotine content
18 of the product, measured in milligrams of nico-
19 tine;

20 “(D) any other information determined ap-
21 propriate by the Secretary and included as a re-
22 quirement in a regulation promulgated under
23 this section.

24 “(2) GENERAL DISCLOSURE AND CONFIDEN-
25 TIALITY.—

1 “(A) REQUIREMENT.—Regulations under
2 subsection (c)(4) shall require that each person
3 who manufactures, packages, or imports ciga-
4 rettes or smokeless tobacco products shall an-
5 nually provide the Secretary with the informa-
6 tion required under this section, including infor-
7 mation as to all ingredients, substances and
8 compounds in a tobacco product.

9 “(B) CONFIDENTIALITY.—

10 “(i) PETITION BY MANUFACTURER.—

11 Upon the submission of the information re-
12 quired under subsection (d)(1), or the sub-
13 mission of any other information under
14 any other provisions of this chapter, a
15 manufacturer may petition the Secretary
16 to exempt certain ingredients, substances,
17 or compounds or other information submit-
18 ted from public disclosure under this sub-
19 section on the basis that such information
20 should be considered confidential as a
21 trade secret. Such petition may be accom-
22 panied by such data as the manufacturer
23 elects to submit.

24 “(ii) DETERMINATION.—Not later
25 than 90 days after receiving a petition

1 under clause (i), the Secretary, in consulta-
2 tion with the Attorney General, shall make
3 a determination with respect to whether
4 the information described in the petition
5 should be exempt from disclosure under
6 clause (i) as a trade secret. The Secretary
7 shall provide the manufacturer involved
8 with notice of such determination, but the
9 decision of the Secretary shall be final.

10 “(iii) PROCEDURES FOR CONFIDEN-
11 TIAL INFORMATION.—The Secretary shall
12 develop procedures to maintain the con-
13 fidentiality of information that is treated
14 as a trade secret under a determination
15 under clause (ii). Such procedures shall in-
16 clude—

17 “(I) a requirement that such in-
18 formation be maintained in a secure
19 facility; and

20 “(ii) a requirement that only the Sec-
21 retary, or the authorized agents of the Sec-
22 retary, will have access to the information
23 and shall be instructed to maintain the
24 confidentiality of such information.

1 “(iv) HEALTH DISCLOSURE.—Not-
2 withstanding a determination under clause
3 (ii), the Secretary may require that any in-
4 gredient, substance, or compound con-
5 tained in a tobacco product that is deter-
6 mined to be exempt from disclosure be dis-
7 closed if the Secretary determines that it is
8 in the interest of public health to disclose
9 such ingredient, substance, or compound.

10 “(v) OTHER DISCLOSURE.—The Sec-
11 retary (or any employee of the Department
12 of Health and Human Services) shall not
13 disclose any information described in sub-
14 clause (I) if such disclosure is prohibited
15 under any provision of law. Any informa-
16 tion that is not required to be disclosed to
17 the public under this subsection, shall be
18 exempt from disclosure pursuant to sub-
19 section (a) of section 552 of title 5, United
20 States Code, by reason of subsection (b)(4)
21 of such section, and shall be considered
22 confidential and shall not be disclosed, ex-
23 cept that such information may be dis-
24 closed to other officers or employees as
25 provided for in clause (iii)(II) or when rel-

1 evant in any proceeding under this chap-
2 ter.

3 “(3) GENERAL DISCLOSURE OF SAFETY.—With
4 respect to each annual submission under paragraph
5 (1) during the 5-year period beginning on the date
6 of enactment of this chapter, the manufacturer shall,
7 for each ingredient, substance, or compound con-
8 tained on the list of the manufacturer for the year
9 involved, disclose whether the manufacturer has de-
10 termined that the ingredient, substance, or
11 compound would be exempt from public disclosure
12 under this chapter.

13 “(f) ACTIONS TO MODIFY OR PROHIBIT CERTAIN TO-
14 BACCO PRODUCTS.—

15 “(1) IN GENERAL.—The Secretary may adopt a
16 health risk management standard under this section
17 that requires—

18 “(A) the modification of a tobacco product
19 in a manner that involves—

20 “(i) the gradual reduction or elimi-
21 nation of nicotine yields of the product; or

22 “(ii) the reduction or elimination of
23 other harmful constituents, ingredients (in-
24 cluding tobacco additives), substances,
25 compounds and properties of the product

1 in accordance with subsection (d)(4)(B),
2 including the establishment of levels of nie-
3 otine and other components, ingredients
4 (including tobacco additives), and constitu-
5 ents of the product, or smoke emitted by
6 such products; or

7 “(B) the prohibition of a tobacco product.

8 “(2) CONSIDERATIONS.—In determining wheth-
9 er to require a modification or prohibition described
10 in paragraph (1), the Secretary shall identify, make
11 available for public comment, and consider relevant
12 factors including whether the modification or prohi-
13 bition—

14 “(A) will result in a significant reduction
15 in the health risks associated with the use of
16 the tobacco product, constituent, or component
17 involved;

18 “(B) will result in a significant increase in
19 the number of individuals seeking tobacco prod-
20 uct cessation or withdrawal treatments, includ-
21 ing an assessment of the effectiveness and ac-
22 cessibility of such treatments;

23 “(C) will result in the creation of a signifi-
24 cant demand for, and supply of, contraband

1 products or other tobacco products that do not
2 meet the requirements of this chapter; and

3 “(D) is technologically feasible for com-
4 mercial manufacturing.

5 “(3) GENERAL PROHIBITION OF TOBACCO
6 PRODUCTS.—

7 “(A) NONDELEGATION.—The Secretary
8 may not delegate the authority provided under
9 this section to promulgate a regulation that re-
10 sults in a general prohibition of a class of to-
11 bacco products.

12 “(B) CONGRESSIONAL REVIEW.—In ac-
13 cordance with section 801 of title 5, United
14 States Code, Congress shall review, and may
15 disapprove, any rule of the Secretary establish-
16 ing, amending, or revoking a tobacco product
17 health risk management standard, except that
18 with respect to a standard that results in a gen-
19 eral prohibition of a class of tobacco products,
20 such standard shall only take effect upon the
21 date of enactment of a joint resolution of ap-
22 proval of such standard. The provisions of sec-
23 tion 802 of title 5, United States Code, relating
24 to certain disapproval resolutions shall apply to

1 the consideration of any joint resolution of ap-
2 proval under this subsection.

3 “(g) COMPLIANCE.—

4 “(1) IN GENERAL.—Health risk management
5 standards under this section shall apply to all to-
6 bacco products to which such standards are relevant.

7 “(2) LIMITATION.—During the period in which
8 a regulation promulgated under this section estab-
9 lishing a health risk standard is in effect, a tobacco
10 product shall not be considered to be in violation of
11 section 301 if such product is in compliance with
12 such regulation.

13 “(h) EVALUATION.—The Secretary shall periodically
14 evaluate the effectiveness of tobacco product health risk
15 standards to determine whether such standards should be
16 amended to reflect new medical, scientific, or technological
17 information.

18 **“SEC. 903. GOOD MANUFACTURING PRACTICE STANDARDS.**

19 “(a) AUTHORITY.—

20 “(1) IN GENERAL.—The Secretary shall, in ac-
21 cordance with subsections (a) and (b) of section 902,
22 prescribe regulations requiring that the methods
23 used in, and the facilities and controls used for, the
24 manufacture, packing, and storage of a tobacco
25 product conform to current good manufacturing

1 practice, as prescribed in such regulations, to ensure
2 that such products will be in compliance with this
3 chapter.

4 “(2) REGISTRATION.—The regulations promul-
5 gated under paragraph (1) shall require that all to-
6 bacco product manufacturers register with the Sec-
7 retary.

8 “(3) SPECIAL CONSULTATION PROCEDURES.—
9 In developing and promulgating any regulation
10 under paragraph (1) the Secretary shall afford the
11 Tobacco Products Scientific Advisory Committee es-
12 tablished under section 907 an opportunity (with a
13 reasonable time period) to submit recommendations
14 in response to the notice of proposed rulemaking.

15 “(b) PESTICIDE RESIDUES.—The regulations pro-
16 mulgated under subsection (a) shall at a minimum re-
17 quire, after consultation with the Administrator of the En-
18 vironmental Protection Agency, the development and ad-
19 herence to applicable tolerances with respect to pesticide
20 chemical residues in finished tobacco products, except that
21 such tolerances shall only apply if the Administrator deter-
22 mines that such tolerances are necessary to prevent such
23 residues from being injurious to health when used in to-
24 bacco products.

1 “(c) PETITIONS FOR EXEMPTIONS AND
2 VARIANCES.—

3 “(1) IN GENERAL.—Any person subject to any
4 requirement prescribed by regulations under sub-
5 section (a) may petition the Secretary for an exemp-
6 tion or variance from such requirement. Such a peti-
7 tion shall be submitted to the Secretary in such form
8 and manner as the Secretary shall by regulation pre-
9 scribe and shall—

10 “(A) in the case of a petition for an ex-
11 emption from a requirement, set forth the basis
12 for the petitioner’s determination that compli-
13 ance with the requirement is not required to en-
14 sure that the tobacco product is in compliance
15 with section 902;

16 “(B) in the case of a petition for a vari-
17 ance from a requirement, set forth the methods
18 proposed to be used in, and the facilities and
19 controls proposed to be used for, the manufac-
20 ture, packing, and storage of the product in lieu
21 of the methods, facilities, and controls pre-
22 scribed by the requirement; and

23 “(C) contain such other information as the
24 Secretary shall prescribe.

1 “(2) TOBACCO PRODUCT REQUIREMENTS WAIV-
2 ER BOARD.—

3 “(A) AUTHORITY.—The Secretary shall es-
4 tablish a Tobacco Product Requirements Waiv-
5 er Board (referred to in this paragraph as the
6 ‘Waiver Board’) to provide advice and make
7 recommendations to the Secretary with respect
8 to the approval or disapproval of petitions sub-
9 mitted under paragraph (1).

10 “(B) MEMBERSHIP.—The Waiver Board
11 shall be composed of 9 members to be ap-
12 pointed by the Secretary, of which—

13 “(i) 3 members shall be appointed
14 from among individuals who are officers or
15 employees of the Federal Government or a
16 State or local government;

17 “(ii) 2 members shall be appointed
18 from among individuals who are represent-
19 atives of the interests of the cigarette and
20 smokeless tobacco industries;

21 “(iii) 2 members shall be appointed
22 from among individuals who are represent-
23 atives of the interests of physicians and
24 other health professionals; and

1 “(iv) 2 members shall be appointed
2 from among individuals who are represent-
3 atives of the interests of the general public.

4 “(C) CHAIRPERSON.—The Secretary shall
5 designate 1 of the members of the Waiver
6 Board to serve as the Chairperson.

7 “(D) COMPENSATION AND EXPENSES.—

8 “(i) COMPENSATION.—Members of
9 the Waiver Board who are not officers or
10 employees of the United States, while at-
11 tending conferences or meetings of the
12 Waiver Board or otherwise serving at the
13 request of the Secretary, shall be entitled
14 to receive compensation at rates to be fixed
15 by the Secretary, which rates may not ex-
16 ceed the daily equivalent of the rate of pay
17 for level 4 of the Senior Executive Sched-
18 ule under section 5382 of title 5, United
19 States Code, for each day (including trav-
20 eltime) they are so engaged.

21 “(ii) EXPENSES.—While conducting
22 the business of the Waiver Board away
23 from their homes or regular places of busi-
24 ness, each member may be allowed travel
25 expenses, including per diem in lieu of sub-

1 sistence, as authorized by section 5703 of
2 title 5 of the United States Code for per-
3 sons in the Government service employed
4 intermittently.

5 “(3) ACTION ON PETITION.—

6 “(A) IN GENERAL.—Not later than 120
7 days of the date on which the Secretary receives
8 the recommendations of the Waiver Board, the
9 Secretary shall issue an order approving or de-
10 nying a petition submitted under paragraph (1).

11 The Secretary may approve—

12 “(i) a petition for an exemption for a
13 tobacco product from a requirement if the
14 Secretary determines that absolute compli-
15 ance with such requirement is not required
16 to assure that the product will comply with
17 this section and is otherwise consistent
18 with the public health; and

19 “(ii) a petition for a variance for a to-
20 bacco product from a requirement if the
21 Secretary determines that the methods to
22 be used in, and the facilities and controls
23 to be used for, the manufacture, packing,
24 and storage of the product in lieu of the
25 methods, controls, and facilities prescribed

1 by the requirement are sufficient to ensure
2 that the product will comply with this sec-
3 tion and is otherwise in compliance with
4 the public health.

5 “(B) CONDITIONS.—An order of the Sec-
6 retary approving a petition for a variance shall
7 prescribe such conditions respecting the meth-
8 ods used in, and the facilities and controls used
9 for, the manufacture, packing, and storage of
10 the tobacco product to be granted the variance
11 under the petition as may be necessary to en-
12 sure that the product will comply with this sec-
13 tion.

14 “(4) INFORMAL HEARING.—After the issuance
15 of an order under paragraph (3) respecting a peti-
16 tion, the petitioner shall have an opportunity for an
17 informal hearing on such order.

18 “(d) RECORDKEEPING AND REPORTING.—The regu-
19 lations promulgated under subsection (a) shall require
20 that manufacturers maintain such files and records as the
21 Secretary may reasonably require relating to tobacco prod-
22 uct safety. Such regulations may require manufacturers
23 to report serious adverse events that are not well-known
24 or well-documented by the scientific community (including

1 events related to contamination or a change in any ingre-
 2 dient or any major change in manufacturing processes).

3 “(e) INSPECTION AUTHORITY.—As provided in sec-
 4 tion 704, the officers and employees of the Secretary shall
 5 have the authority to conduct unannounced inspections of
 6 any factory, warehouse, or other establishment of any to-
 7 bacco product manufacturer and shall have access to the
 8 records, files, papers, processes, controls, and facilities re-
 9 lating to tobacco product manufacturing.

10 “(f) AGRICULTURAL PRODUCERS.—The Secretary
 11 may not promulgate any regulation under this section that
 12 has the effect of placing regulatory burdens on tobacco
 13 producers (as such term is used for purposes of the Agri-
 14 cultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.)
 15 and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.))
 16 in excess of the regulatory burdens generally placed on
 17 other agricultural commodity producers.

18 **“SEC. 904. TOBACCO PRODUCT LABELING, WARNING, AND**
 19 **PACKAGING STANDARDS.**

20 “(a) CIGARETTES.—

21 “(1) IN GENERAL.—

22 “(A) PACKAGING.—It shall be unlawful for
 23 any person to manufacture, package, or import
 24 for sale or distribution within the United States
 25 any cigarettes the package of which fails to

1 bear, in accordance with the requirements of
2 this subsection, one of the following statements:

3 “WARNING: Cigarettes Are Addictive.

4 “WARNING: Tobacco Smoke Can Harm
5 Your Children.

6 “WARNING: Cigarettes Cause Fatal Lung
7 Disease.

8 “WARNING: Cigarettes Cause Cancer.

9 “WARNING: If You Think Smoking Is
10 Cool, You Are Dead Wrong.

11 “WARNING: Cigarettes Cause Strokes
12 And Heart Disease.

13 “WARNING: Smoking During Pregnancy
14 Can Harm Your Baby.

15 “WARNING: Smoking Can Kill You.

16 “WARNING: Tobacco Smoke Causes
17 Fatal Lung Disease In Nonsmokers.

18 “WARNING: Quitting Smoking Now
19 Greatly Reduces Serious Risks To Your
20 Health.

21 “(B) ADVERTISING.—It shall be unlawful
22 for any manufacturer or importer of cigarettes
23 to advertise or cause to be advertised within the
24 United States any cigarette unless the advertis-
25 ing bears, in accordance with the requirements

of this subsection, one of the following statements:

“WARNING: Cigarettes Are Addictive.

“WARNING: Tobacco Smoke Can Harm Your Children.

“WARNING: Cigarettes Cause Fatal Lung Disease.

“WARNING: Cigarettes Cause Cancer.

“WARNING: If You Think Smoking Is Cool, You Are Dead Wrong.

“WARNING: Cigarettes Cause Strokes And Heart Disease.

“WARNING: Smoking During Pregnancy Can Harm Your Baby.

“WARNING: Smoking Can Kill You.

“WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

“WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

“(2) REQUIREMENTS FOR LABEL STATEMENTS.—

“(A) LOCATION.—Each label statement required by subparagraph (A) of paragraph (1) shall be located on the upper portion of the

1 front panel of the cigarette package (or carton)
2 and occupy not less than 25 percent of such
3 front panel.

4 “(B) TYPE AND COLOR.—With respect to
5 each label statement required by subparagraph
6 (A) of paragraph (1), the phrase ‘WARNING’
7 shall appear in capital letters and the label
8 statement shall be printed in 17 point type with
9 adjustments as determined appropriate by the
10 Secretary to reflect the length of the required
11 statement. All the letters in the label statement
12 shall appear in conspicuous and legible type, in
13 contrast by typography, layout, or color with all
14 other printed material on the package, and be
15 printed in an alternating black-on-white and
16 white-on-black format as determined appro-
17 priate by the Secretary.

18 “(C) EXCEPTION.—The provisions of sub-
19 paragraph (A) shall not apply in the case of a
20 flip-top cigarette package (offered for sale on
21 the date of enactment of this title) where the
22 front portion of the flip-top does not comprise
23 at least 25 percent of the front panel. In the
24 case of such a package, the label statement re-
25 quired by subparagraph (A) of paragraph (1)

1 shall occupy the entire front portion of the flip
2 top.

3 “(3) REQUIREMENTS FOR ADVERTISING.—

4 “(A) LOCATION.—Each label statement re-
5 quired by subparagraph (B) of paragraph (1)
6 shall occupy not less than 20 percent of the
7 area of the advertisement involved.

8 “(B) TYPE AND COLOR.—

9 “(i) TYPE.—With respect to each
10 label statement required by subparagraph
11 (B) of paragraph (1), the phrase ‘WARN-
12 ING’ shall appear in capital letters and the
13 label statement shall be printed in the fol-
14 lowing types:

15 “(I) With respect to whole page
16 advertisements on broadsheet news-
17 paper—45 point type.

18 “(II) With respect to half page
19 advertisements on broadsheet news-
20 paper—39 point type.

21 “(III) With respect to whole page
22 advertisements on tabloid news-
23 paper—39 point type.

1 “(IV) With respect to half page
2 advertisements on tabloid news-
3 paper—27 point type.

4 “(V) With respect to DPS maga-
5 zine advertisements—31.5 point type.

6 “(VI) With respect to whole page
7 magazine advertisements—31.5 point
8 type.

9 “(VII) With respect to 28cm x 3
10 column advertisements—22.5 point
11 type.

12 “(VIII) With respect to 20cm x 2
13 column advertisements—15 point
14 type.

15 The Secretary may revise the required type
16 sizes as the Secretary determines appro-
17 priate within the 20 percent requirement.

18 “(ii) COLOR.—All the letters in the
19 label statement under this subparagraph
20 shall appear in conspicuous and legible
21 type, in contrast by typography, layout, or
22 color with all other printed material in the
23 advertisement, and be printed in an alter-
24 nating black-on-white and white-on-black

1 format as determined appropriate by the
2 Secretary.

3 “(4) ROTATION OF LABEL STATEMENTS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the label statements speci-
6 fied in subparagraphs (A) and (B) of paragraph
7 (1) shall be rotated by each manufacturer or
8 importer of cigarettes quarterly in alternating
9 sequence on packages of each brand of ciga-
10 rettes manufactured by the manufacturer or
11 importer and in the advertisements for each
12 such brand of cigarettes in accordance with a
13 plan submitted by the manufacturer or im-
14 porter and approved by the Secretary. The Sec-
15 retary shall approve a plan submitted by a
16 manufacturer or importer of cigarettes which
17 will provide the rotation required by this para-
18 graph and which assures that all of the label
19 statements required by subparagraphs (A) and
20 (B) will be displayed by the manufacturer or
21 importer at the same time.

22 “(B) APPLICATION OF OTHER ROTATION
23 REQUIREMENTS.—

24 “(i) IN GENERAL.—A manufacturer
25 or importer of cigarettes may apply to the

1 Secretary to have the rotation schedule de-
2 scribed in clause (iii) apply with respect to
3 a brand style of cigarettes manufactured
4 or imported by such manufacturer or im-
5 porter if—

6 “(I) the number of cigarettes of
7 such brand style sold in the fiscal year
8 of the manufacturer or importer pre-
9 ceding the submission of the applica-
10 tion is less than $\frac{1}{4}$ of 1 percent of all
11 the cigarettes sold in the United
12 States in such year; and

13 “(II) more than $\frac{1}{2}$ of the ciga-
14 rettes manufactured or imported by
15 such manufacturer or importer for
16 sale in the United States are
17 packaged into brand styles which meet
18 the requirements of subclause (I).

19 If an application is approved by the Sec-
20 retary, the rotation schedule described in
21 clause (iii) shall apply with respect to the
22 applicant during the 1-year period begin-
23 ning on the date of the application ap-
24 proval.

1 “(ii) PLAN.—An applicant under
2 clause (i) shall include in its application a
3 plan under which the label statements
4 specified in subparagraph (A) of paragraph
5 (1) will be rotated by the applicant manu-
6 facturer or importer in accordance with the
7 label rotation described in clause (iii).

8 “(iii) OTHER ROTATION REQUIRE-
9 MENTS.—Under the rotation schedule
10 which the manufacturer or importer with
11 an approved application may put into ef-
12 fect, each of the label statements specified
13 in subparagraph (A) of paragraph (1) shall
14 appear on the packages of each brand style
15 of cigarettes with respect to which the ap-
16 plication was approved an equal number of
17 times within the 12-month period begin-
18 ning on the date of the approval by the
19 Secretary of the application.

20 “(5) APPLICATION OF REQUIREMENT.—Para-
21 graph (1) does not apply to a distributor or retailer
22 of cigarettes who does not manufacture, package, or
23 import cigarettes for sale or distribution within the
24 United States.

1 “(6) TELEVISION AND RADIO ADVERTISING.—It
 2 shall be unlawful to advertise cigarettes and little ci-
 3 gars on any medium of electronic communications
 4 subject to the jurisdiction of the Federal Commu-
 5 nications Commission.

6 “(b) SMOKELESS TOBACCO PRODUCTS.—

7 “(1) IN GENERAL.—

8 “(A) PACKAGING.—It shall be unlawful for
 9 any person to manufacture, package, or import
 10 for sale or distribution within the United States
 11 any smokeless tobacco product the package of
 12 which fails to bear, in accordance with the re-
 13 quirements of this subsection, one of the follow-
 14 ing statements:

15 WARNING: This Product May Cause
 16 Mouth Cancer.

17 WARNING: This Product May Cause
 18 Gum Disease And Tooth Loss.

19 WARNING: This Product Is Not A Safe
 20 Alternative To Cigarettes.

21 WARNING: Smokeless Tobacco Is Addict-
 22 ive.

23 “(B) ADVERTISING.—It shall be unlawful
 24 for any manufacturer or importer of smokeless
 25 tobacco products to advertise or cause to be ad-

vertised within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this subsection, one of the following statements:

WARNING: This Product May Cause Mouth Cancer.

WARNING: This Product May Cause Gum Disease And Tooth Loss.

WARNING: This Product Is Not A Safe Alternative To Cigarettes.

WARNING: Smokeless Tobacco Is Addictive.

“(2) REQUIREMENTS FOR LABEL STATEMENTS.—

“(A) LOCATION.—Each label statement required by subparagraph (A) of paragraph (1) shall be located on the principal display panel of the product and occupy not less than 25 percent of such panel.

“(B) TYPE AND COLOR.—With respect to each label statement required by subparagraph (A) of paragraph (1), the phrase ‘WARNING’ shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the

1 Secretary to reflect the length of the required
2 statement. All the letters in the label statement
3 shall appear in conspicuous and legible type in
4 contrast by typography, layout, or color with all
5 other printed material on the package and be
6 printed in an alternating black on white and
7 white on black format as determined appro-
8 priate by the Secretary.

9 “(3) ADVERTISING AND ROTATION.—The provi-
10 sions of paragraphs (3) and (4)(A) of subsection (a)
11 shall apply to advertisements for smokeless tobacco
12 products and the rotation of the statements required
13 under paragraph (1)(A) on such products.

14 “(4) APPLICATION OF REQUIREMENT.—Para-
15 graph (1) does not apply to a distributor or retailer
16 of smokeless tobacco products who does not manu-
17 facture, package, or import such products for sale or
18 distribution within the United States.

19 “(5) TELEVISION AND RADIO ADVERTISING.—It
20 shall be unlawful to advertise smokeless tobacco on
21 any medium of electronic communications subject to
22 the jurisdiction of the Federal Communications
23 Commission.

24 (c) STATEMENT OF INTENDED USE.—

1 (1) REQUIREMENT.—Each manufacturer, dis-
 2 tributor, and retailer advertising or causing to be
 3 advertised, disseminating or causing to be dissemi-
 4 nated advertising concerning, tobacco products oth-
 5 erwise permitted under this chapter shall include, in
 6 a type size and format as the Secretary may pre-
 7 scribe in a regulation promulgated under subsection
 8 (d), the established name of the product and a state-
 9 ment of the intended use of the product as provided
 10 for in paragraph (2).

11 (3) INTENDED USE STATEMENTS.—

12 (A) CIGARETTES.—A statement of in-
 13 tended use for cigarettes or cigarette tobacco is
 14 as follows (whichever is appropriate):

15 “Cigarettes—A Dangerous Tobacco Product In-
 16 tended For Use Only By Persons 18 or Older.

17 “Cigarette Tobacco—A Dangerous Tobacco
 18 Product Intended For Use Only By Persons 18
 19 or Older.

20 (B) SMOKELESS TOBACCO.—A statement
 21 of intended use for a smokeless tobacco product
 22 is as follows (whichever is appropriate):

23 “Loose Leaf Chewing Tobacco—A Dangerous
 24 Tobacco Product Intended For Use Only By
 25 Persons 18 or Older.

1 “Plug Chewing Tobacco—A Dangerous To-
 2 bacco Product Intended For Use Only By Per-
 3 sons 18 or Older.

4 “Twist Chewing Tobacco—A Dangerous To-
 5 bacco Product Intended For Use Only By Per-
 6 sons 18 or Older.

7 “Moist Snuff—A Dangerous Tobacco Product
 8 Intended For Use Only By Persons 18 or
 9 Older.

10 “Dry Snuff—A Dangerous Tobacco Product In-
 11 tended For Use Only By Persons 18 or Older.

12 “(d) REGULATIONS.—

13 “(1) IN GENERAL.—Not later than 180 days
 14 after the date of the enactment of this title, the Sec-
 15 retary shall promulgate such regulations as may be
 16 necessary to implement subsections (a), (b), and (c).

17 “(2) AUTHORITY TO REVISE TOBACCO PRODUCT
 18 LABELING STATEMENTS.—

19 “(A) IN GENERAL.—The Secretary may by
 20 rule change the text of any of the statements
 21 required under subsections (a) and (b). A rule
 22 promulgated under this subparagraph shall not
 23 become effective prior to the expiration of the
 24 1-year period beginning on the date on which

1 the final rule is published in the Federal Reg-
2 ister.

3 “(B) LIMITATION.—The Secretary may
4 not promulgate any rule under subparagraph
5 (A) during the 5-year period beginning on the
6 effective date of the PROTECT Act unless the
7 Secretary can demonstrate extraordinary cir-
8 cumstances.

9 “(3) COMMON OR USUAL NAMES.—The Sec-
10 retary, in accordance with the procedures set forth
11 in section 902, shall promulgate regulations requir-
12 ing the disclosure to the public of the common or
13 usual name of each ingredient (other than tobacco,
14 water, or reconstituted tobacco sheet made wholly
15 from tobacco) contained in a tobacco product in de-
16 scending order of predominance by weight, except
17 that such regulations—

18 “(A) may provide for the disclosure of
19 spices, flavorings, and colorings without naming
20 each spice, flavoring, or coloring; and

21 “(B) may exempt from disclosure inciden-
22 tal additives, including processing aids and
23 chemical preservatives, that are present in a to-
24 bacco product at insignificant levels that the

1 Secretary determines do not have any func-
 2 tional effect or health risk.

3 “(e) PREEMPTION.—No statement relating to the use
 4 of cigarettes or smokeless tobacco products and health,
 5 other than the statements required by subsections (a), (b),
 6 or (c), shall be required on any package or in any adver-
 7 tisement of cigarettes or a smokeless tobacco product.

8 “(f) EXPORTS.—Packages of cigarettes or smokeless
 9 tobacco products manufactured, imported, or packaged—

10 “(1) for export from the United States; or

11 “(2) for delivery to a vessel or aircraft, as sup-
 12 plies, for consumption beyond the jurisdiction of the
 13 internal revenue laws of the United States;

14 shall be exempt from the requirements of this chapter, but
 15 such exemptions shall not apply to cigarettes or smokeless
 16 tobacco products manufactured, imported, or packaged for
 17 sale or distribution to members or units of the Armed
 18 Forces of the United States located outside of the United
 19 States.

20 **“SEC. 905. REDUCED RISK TOBACCO PRODUCTS.**

21 “(a) GENERAL RULE.—Except as provided in sub-
 22 section (b), the regulations promulgated in accordance
 23 with section 902 shall require that a tobacco product be
 24 deemed to be in violation with this chapter if the labeling
 25 of the package of the product, or the claims of the manu-

1 facturer in connection with the product, can reasonably
2 be interpreted as stating or implying that the product pre-
3 sents a reduced health risk as compared to other similar
4 products. Any tobacco product accompanied by a claim to
5 diagnose, cure, mitigate, treat, or prevent a disease, not
6 including statements that the Secretary may permit for
7 reduced risk tobacco products under this section, will be
8 subject to regulation as a new drug under section 505.

9 “(b) EXCEPTION.—

10 “(1) IN GENERAL.—Subsection (a) shall not
11 apply to the labeling of a tobacco product, or the
12 claims of the manufacturer in connection with the
13 product, if—

14 “(A) the manufacturer, based on scientific
15 evidence, demonstrates to the Secretary that
16 the product reduces the risk to the health of the
17 user as compared to other similar tobacco prod-
18 ucts; and

19 “(B) the Secretary approves the specific
20 claim that will be made a part of the labeling
21 of the product, or the specific claims of the
22 manufacturer in connection with the product.

23 “(2) REDUCTION IN HEALTH RISK.—The Sec-
24 retary shall promulgate regulations to permit the in-
25 clusion of scientifically-based specific health claims

1 on the labeling of a tobacco product package, or the
2 making of such claims by the manufacturer in con-
3 nection with the product, where the Secretary deter-
4 mines that the inclusion or making of such claims
5 would reduce the health risk to consumers and oth-
6 erwise promote public health.

7 “(c) DEVELOPMENT OF REDUCED RISK TOBACCO
8 PRODUCT TECHNOLOGY.—

9 “(1) NOTIFICATION OF SECRETARY.—The man-
10 ufacturer of a tobacco product shall provide written
11 notice to the Secretary upon the development or ac-
12 quisition by the manufacturer of any technology that
13 would reduce the risk of such products to the health
14 of the user. Such notification shall not be required
15 until adequate intellectual property protections have
16 been secured by the manufacturer, such as the issu-
17 ance of a patent or the execution of a licensing
18 agreement.

19 “(2) CONFIDENTIALITY.—The Secretary shall
20 promulgate regulations to provide a manufacturer
21 with appropriate confidentiality protections with re-
22 spect to technology that is the subject of a notifica-
23 tion under paragraph (1) that contains evidence that
24 the technology involved is in the early developmental
25 stages.

1 “(3) LICENSING.—

2 “(A) IN GENERAL.—With respect to any
3 technology for which a notification has been
4 provided under paragraph (1), the manufac-
5 turer shall permit the use of such technology by
6 other manufacturers of tobacco products to
7 which this chapter applies.

8 “(B) FEES.—The Secretary of Commerce
9 shall promulgate regulations to provide for the
10 payment of a commercially reasonable fee by
11 each manufacturer that uses the technology de-
12 scribed under subparagraph (A) to the manu-
13 facturer that submits the notice under para-
14 graph (1) for such technology. Such regulations
15 shall contain procedures for the resolution of
16 fee disputes between manufacturers under this
17 subparagraph.

18 “(d) REQUIREMENT OF MANUFACTURE AND MAR-
19 KETING.—

20 “(1) PURPOSE.—It is the purpose of this sub-
21 section to provide for a mechanism to create incen-
22 tives that help ensure that tobacco products that are
23 designed to be less hazardous to the health of users
24 are developed, tested, and made available to consum-
25 ers.

1 “(2) DETERMINATION.—Upon a determination
 2 by the Secretary that the manufacture of a tobacco
 3 product that is less hazardous to the health of users
 4 is technologically and commercially feasible, the Sec-
 5 retary may, in accordance with this subsection and
 6 through the issuance or amendment of a health risk
 7 standard under section 902—

8 “(A) require the disclosure of the existence
 9 of such technology;

10 “(B) prohibit the use of technology that is
 11 superseded by such new technology; and

12 “(C) require that manufacturers cease
 13 manufacturing and marketing tobacco products
 14 that do not incorporate such technology.

15 **“SEC. 906. TOBACCO PRODUCT MARKETING RESTRICTIONS.**

16 “(a) IN GENERAL.—The Secretary shall by regula-
 17 tion implement the prohibitions described in this section
 18 concerning the marketing of tobacco products to minors.

19 “(b) SALES TO MINORS PROHIBITED.—No retailer
 20 may distribute a tobacco product to any individual who
 21 is under 18 years of age.

22 “(c) PHOTO IDENTIFICATION.—

23 “(1) REQUIREMENT.—Except as provided in
 24 paragraph (2), each retailer shall verify, by means of
 25 photographic identification containing the date of

1 birth of the bearer, that no individual purchasing a
2 tobacco product is under 18 years of age.

3 “(2) EXCEPTION.—No verification under para-
4 graph (1) is required for any individual who is at
5 least 27 years of age.

6 “(3) LOCATION OF PRODUCTS.—Except as pro-
7 vided in subsection (j), a retailer shall ensure that
8 all tobacco products are located in areas where cus-
9 tomers do not have access to the products.

10 “(d) FACE-TO-FACE TRANSACTIONS.—Except as
11 provided in subsection (i)(1), a retailer may sell tobacco
12 products only in a direct, face-to-face exchange without
13 the assistance of any electronic or mechanical device.

14 “(e) OUT-OF-PACKAGE DISTRIBUTION.—No retailer
15 may break or otherwise open a tobacco product to sell or
16 distribute to individuals portions of such product (includ-
17 ing individual cigarettes or a number of cigarettes that
18 is smaller than the quantity in the minimum package size,
19 or any quantity of cigarette tobacco or smokeless tobacco
20 that is smaller than the smallest package distributed by
21 the retailer for individual consumer use).

22 “(f) RETAILER COMPLIANCE WITH RESPECT TO
23 SELF-SERVICE.—Each retailer shall ensure that all to-
24 bacco-related self-service displays, advertising, labeling,
25 and other items that are located in the establishment of

1 the retailer and that do not comply with the requirements
2 of this section are removed or are brought into compliance
3 with the requirements of this section.

4 “(g) MINIMUM CIGARETTE PACKAGE SIZE.—Except
5 as otherwise provided in this section, no manufacturer,
6 distributor, or retailer may sell or cause to be sold, or dis-
7 tribute or cause to be distributed, any cigarette package
8 that contains fewer than 20 cigarettes.

9 “(h) PROHIBITION ON SAMPLING.—No manufac-
10 turer, distributor, or retailer may distribute or cause to
11 be distributed any free samples of any tobacco product.

12 “(i) PROHIBITION ON DISTRIBUTION THROUGH
13 SELF-SERVICE MODES OF SALE.—

14 “(1) VENDING MACHINES.—Except as provided
15 in subsection (j)(1)(B), no manufacturer, distribu-
16 tor, or retailer may distribute or cause to be distrib-
17 uted any tobacco product through a vending ma-
18 chine.

19 “(2) OTHER DISPLAYS.—Except as provided in
20 subsection (j)(1)(C), no manufacturer, distributor,
21 or retailer may distribute or cause to be distributed
22 any tobacco product through a self-service display.

23 “(j) PERMITTED SELF-SERVICE MODES OF SALE.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of this section, the following methods of
3 distributing tobacco products are permitted:

4 “(A) Mail-order sales as provided for in
5 paragraph (2), except that mail-order redemp-
6 tion of coupons and the distribution of free
7 samples through the mail shall be prohibited.

8 “(B) Distribution through vending ma-
9 chines that are located in facilities where the
10 retailer ensures that no individuals under 18
11 years of age are present or permitted to enter
12 at any time.

13 “(C) Distribution through self-service dis-
14 plays that are located in facilities where the re-
15 tailer ensures that no individuals under 18
16 years of age are present or permitted to enter
17 at any time.

18 “(2) MAIL-ORDER SALES.—

19 “(A) IN GENERAL.—A manufacturer, dis-
20 tributor, or retailer may distribute or cause to
21 be distributed a tobacco product through mail-
22 order sales only if such sales are subject to a
23 procedure for verifying that no individual pur-
24 chasing such products is under 18 years of age.

1 “(B) REVIEW BY SECRETARY.—Not later
 2 than 2 years after the date of enactment of this
 3 section, the Secretary shall review the verifica-
 4 tion procedures implemented under subpara-
 5 graph (A) to determine whether individuals
 6 under 18 years of age are obtaining tobacco
 7 products through the mail. If the Secretary de-
 8 termines that a significant number of underage
 9 individuals are obtaining such products through
 10 the mail, the Secretary may promulgate regula-
 11 tions in accordance with section 902 to prohibit
 12 the distribution of tobacco products through the
 13 mail.

14 **“SEC. 907. TOBACCO PRODUCTS SCIENTIFIC ADVISORY**
 15 **COMMITTEE.**

16 “(a) ESTABLISHMENT.—Not later than 1 year after
 17 the date of enactment of this chapter, the Secretary shall
 18 establish an advisory committee, to be known as the ‘To-
 19 bacco Products Scientific Advisory Committee’, to assist
 20 the Secretary in establishing, amending, or revoking a reg-
 21 ulation promulgated under section 902, 903, 904, or 905.

22 “(b) MEMBERSHIP.—

23 “(1) IN GENERAL.—The Secretary shall appoint
 24 as members of the Tobacco Products Scientific Advi-
 25 sory Committee—

1 “(A) individuals with expertise in the med-
 2 icine, science, or technology involving the manu-
 3 facture and use of tobacco products, who are of
 4 appropriately diversified professional back-
 5 grounds;

6 “(B) individuals with expertise in law or
 7 ethics;

8 “(C) a representative of tobacco product
 9 manufacturers;

10 “(D) a representative of the general public
 11 selected from anti-tobacco organizations; and

12 “(E) a representative of the general public
 13 selected from pro-tobacco organizations.

14 “(2) LIMITATION.—The Secretary may not ap-
 15 point to the Advisory Committee any individual who
 16 is in the regular full-time employ of the Federal
 17 Government. The Secretary may appoint Federal of-
 18 ficials as ex-officio members.

19 “(3) CHAIRPERSON.—The Secretary shall des-
 20 ignate 1 of the members of advisory committee to
 21 serve as chairperson of the Advisory Committee.

22 “(c) DUTIES.—The Tobacco Products Scientific Ad-
 23 visory Committee shall—

1 “(1) assist the Secretary in establishing,
2 amending, or revoking regulations under section
3 902, 903, 904, or 905;

4 “(2) examine and make recommendations con-
5 cerning the effects of the alteration of the nicotine
6 yield levels in tobacco products;

7 “(3) examine and make recommendations con-
8 cerning whether there is a threshold level below
9 which nicotine yields do not produce dependence on
10 the tobacco product involved, and, if so, determine
11 what that level is; and

12 “(4) review other safety, dependence or health
13 issues relating to tobacco products as requested by
14 the Secretary.

15 **“SEC. 908. REPORTS.**

16 “Not later than 18 months after the date of enact-
17 ment of this chapter, and biennially thereafter, the Sec-
18 retary shall prepare and submit to Congress a report con-
19 taining—

20 “(1) a description of the current sales, advertis-
21 ing, and marketing practices associated with tobacco
22 products;

23 “(2) a description of the use patterns of tobacco
24 products, including a report on use by individuals
25 under 18 years of age;

1 “(3) a description of the effects of health pro-
2 motion and disease prevention efforts related to the
3 use of tobacco products;

4 “(4) an evaluation of the health promotion and
5 disease prevention efforts relating to tobacco prod-
6 ucts and the identification of areas appropriate for
7 further research; and

8 “(5) such recommendations for legislation and
9 administrative action relating to tobacco products as
10 the Secretary considers appropriate.

11 **“SEC. 909. JUDICIAL REVIEW.**

12 “(a) APPLICATION OF SECTION.—

13 “(1) IN GENERAL.—Not later than 60 days
14 after the effective date of any regulation under this
15 chapter establishing, amending, or revoking a health
16 risk management standard for a tobacco product,
17 any person adversely affected by such regulation
18 may file a petition with the United States Court of
19 Appeals for the District of Columbia or for the cir-
20 cuit wherein such person resides or has its principal
21 place of business for judicial review of such regula-
22 tion. A copy of the petition shall be transmitted by
23 the clerk of the court to the Secretary or other offi-
24 cer designated by him for that purpose.

1 “(2) RECORD OF PROCEEDING.—The Secretary
2 shall file in the court under paragraph (1) the
3 record of the proceedings on which the Secretary
4 based the regulation involved as provided for in sec-
5 tion 2112 of title 28, United States Code.

6 “(3) DEFINITION.—For purposes of this sec-
7 tion, the term ‘record’ means all notices and other
8 matter published in the Federal Register with re-
9 spect to the regulation reviewed, all information sub-
10 mitted to the Secretary with respect to such regula-
11 tion, proceedings of any panel or advisory committee
12 with respect to such regulation, any hearing held
13 with respect to such regulation, and any other infor-
14 mation identified by the Secretary, in the adminis-
15 trative proceeding held with respect to such regula-
16 tion, as being relevant to such regulation.

17 “(b) ADDITIONAL DATA, VIEWS, AND ARGUMENTS.—
18 If the petitioner applies to the court under this section
19 for leave to adduce additional data, views, or arguments
20 respecting the regulation being reviewed and shows to the
21 satisfaction of the court that such additional data, views,
22 or arguments are material and that there were reasonable
23 grounds for the petitioner’s failure to adduce such data,
24 views, or arguments in the proceedings before the Sec-
25 retary, the court may order the Secretary to provide addi-

1 tional opportunity for the oral presentation of data, views,
2 or arguments and for written submissions. The Secretary
3 may modify such findings, or make new findings by reason
4 of the additional data, views, or arguments so taken and
5 shall file with the court such modified or new findings,
6 and the recommendations of the Secretary, if any, for the
7 modification or setting aside of the regulation or order
8 being reviewed, with the return of such additional data,
9 views, or arguments.

10 “(c) STANDARD FOR REVIEW.—Upon the filing of the
11 petition under subsection (a) judicial review of a regula-
12 tion, the court shall have jurisdiction to review the regula-
13 tion in accordance with chapter 7 of title 5, United States
14 Code, and to grant appropriate relief, including interim
15 relief, as provided for in such chapter. A regulation pro-
16 mulgated under this chapter shall not be affirmed if it is
17 found to be unsupported by substantial evidence on the
18 record taken as a whole.

19 “(d) FINALITY OF JUDGMENTS.—The judgment of
20 the court affirming or setting aside, in whole or in part,
21 any regulation under this section shall be final, subject
22 to review by the Supreme Court of the United States upon
23 certiorari or certification, as provided for in section 1254
24 of title 28, United States Code.

1 “(e) OTHER REMEDIES.—The remedies provided for
2 in this section shall be in addition to and not in lieu of
3 any other remedies provided for by law.

4 “(f) STATEMENT OF REASONS.—To facilitate judicial
5 review under this section or under any other provision of
6 law of a regulation issued under this chapter, each such
7 regulation shall contain a statement of the reasons for its
8 issuance and the basis, in the record of the proceedings
9 held in connection with its issuance, for its issuance.

10 **“SEC. 910. PREEMPTION.**

11 “(a) LIMITATION.—No requirement with respect to
12 a tobacco product shall be applied by any State or local
13 statute or regulation if such requirement conflicts with the
14 requirements of section 902, 903, 904, or 905.

15 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion shall be construed as prohibiting a State or political
17 subdivision of a State from enacting statutes or regula-
18 tions concerning tobacco products so long as such statutes
19 or regulations do not conflict with the requirements of sec-
20 tion 902, 903, 904, or 905.

21 “(c) EFFECT ON LIABILITY LAW.—Except as other-
22 wise provided in this chapter, nothing in this section shall
23 relieve any person from liability at common law or under
24 State statutory law to any other person.”.

1 **SEC. 402. TECHNICAL PROVISIONS.**

2 (a) APPLICATION OF FEDERAL CIGARETTE LABEL-
3 ING AND ADVERTISING ACT.—The provisions of the Fed-
4 eral Cigarette Labeling and Advertising Act (15 U.S.C.
5 1331 et seq.) that apply to cigarettes shall be superseded
6 by the provisions of this title (and the amendments made
7 by this title).

8 (b) REPEAL.—The Comprehensive Smokeless To-
9 bacco Health Education Act of 1986 (15 U.S.C. 4401 et
10 seq.) is repealed.

11 **SEC. 403. FEDERAL LICENSING OF MILITARY AND OTHER**
12 **ENTITIES.**

13 (a) IN GENERAL.—The Secretary, in consultation
14 with the Secretary of Defense, Secretary of State, and
15 other appropriate Federal officials, shall establish and im-
16 plement a Federal tobacco licensing program to be applied
17 to entities that sell or distribute tobacco products—

18 (1) on any military installation (as defined in
19 section 2801(c)(2) of title X, United States Code);

20 (2) in any United States embassy;

21 (3) in any facility owned and operated by the
22 Federal Government either in the United States or
23 in a foreign country;

24 (4) in any duty-free shop located within the
25 United States; or

1 (5) through any other Federal entity or on any
 2 other Federal property as determined appropriate by
 3 the Secretary.

4 (b) REQUIREMENTS OF PROGRAM.—The program es-
 5 tablished under subsection (a) shall apply requirements
 6 (including those for penalties, suspensions, and revoca-
 7 tions) similar to those required to be implemented by
 8 States under this subtitle.

9 (c) INDIAN TRIBES AND TRIBAL LANDS.—For pur-
 10 poses of applying and enforcing the provisions of this sub-
 11 title to entities that sell or otherwise distribute tobacco
 12 products on Indian reservations (as defined in section
 13 403(9) of the Indian Child Protection and Family Violence
 14 Prevention Act (25 U.S.C. 3202(9))), an Indian tribe or
 15 tribal organization shall be treated as a State.

16 **TITLE V—PAYMENTS TO STATES** 17 **AND PUBLIC HEALTH PRO-** 18 **GRAMS**

19 **Subtitle A—Payments to States**

20 **SEC. 501. REIMBURSEMENT FOR STATE EXPENDITURES.**

21 (a) PAYMENTS.—

22 (1) IN GENERAL.—The Trustees shall use
 23 amounts made available under section 101(c)(1) in
 24 each fiscal year to provide funds to each State to re-
 25 imburse such State for amounts expended by the

1 State for the treatment of individuals with tobacco-
 2 related illnesses or conditions.

3 (2) AMOUNT.—The amount for which a State is
 4 eligible for under paragraph (1) for a fiscal year
 5 shall be based on the applicable percentage described
 6 in paragraph (3) of the amount available for such
 7 fiscal year under paragraph (1).

8 (3) APPLICABLE PERCENTAGE.—For purposes
 9 of paragraph (2), the applicable percentage for any
 10 State is determined in accordance with the following
 11 table.

State	Applicable Percentage
Alabama	1.270390
Alaska	0.241356
Arizona	1.163883
Arkansas	0.751011
California	8.805641
Colorado	1.054018
Connecticut	1.596937
Delaware	0.227018
District of Columbia	0.534487
Florida	3.590667
Georgia	2.007112
Hawaii	0.642527
Idaho	0.257835
Illinois	4.272898
Indiana	1.714594
Iowa	0.758686
Kansas	0.762230
Kentucky	1.875439
Louisiana	1.916886
Maine	0.870740
Maryland	2.051849
Massachusetts	3.700447
Michigan	4.431824
Minnesota	2.474364
Mississippi	0.851450
Missouri	1.659116
Montana	0.335974
Nebraska	0.445356
Nevada	0.307294
New Hampshire	0.552048

State	Applicable Percentage
New Jersey	3.494187
New Mexico	0.465816
New York	14.529380
North Carolina	2.097625
North Dakota	0.250758
Ohio	4.690156
Oklahoma	0.841972
Oregon	1.092920
Pennsylvania	5.233270
Rhode Island	0.821727
South Carolina	0.883628
South Dakota	0.234849
Tennessee	2.479873
Texas	4.451382
Utah	0.330016
Vermont	0.370244
Virginia	1.373860
Washington	1.794612
West Virginia	1.003660
Wisconsin	2.098696
Wyoming	0.122405
American Samoa	0.008681
N. Mariana Islands	0.001519
Guam	0.006506
U.S. Virgin Islands	0.004804
Puerto Rico	0.193175.

1 (4) USE OF FUNDS.—Except as provided in
2 subsection (b), a State may use amounts received
3 under this subsection as the State determines appro-
4 priate.

5 (b) AMOUNT ATTRIBUTABLE TO FEDERAL MEDICAL
6 ASSISTANCE PERCENTAGE.—

7 (1) DETERMINATION.—With respect to each
8 State, the Trustees shall determine the amount of
9 the reimbursement under subsection (a) for each fis-
10 cal year that is equal to the percentage that has
11 been applied to the State as the Federal medical as-
12 sistance percentage (as defined in section 1905(b))

1 of the Social Security Act (42 U.S.C. 1396d(b)) ex-
2 penditures by the State for the preceding fiscal year.

3 (2) REQUIRED USE.—With respect to the
4 amount determined under paragraph (1) for a State
5 for a fiscal year, the Secretary shall not treat such
6 amount as an overpayment under any joint Federal-
7 State health program if the State certifies to the
8 Trustee that such amount will be used by the State
9 for anti-smoking or tobacco-related purposes under
10 section 502.

11 (c) INDIAN TRIBES.—Based on the determinations
12 made by the Trustees under section 901(f)(2), the Trust-
13 ees shall, from amounts available for payments to States
14 under this section in a fiscal year, reserve not less than
15 the aggregate amount determined under section 901(f)(2)
16 for payments to Indian tribes under such section 901(f).
17 The Trustees shall reduce the amounts payable to a State
18 under this section in accordance with determinations with
19 respect to such State under section 901(f) to provide
20 amounts to Indian tribes and tribal organizations in such
21 States.

1 **SEC. 502. REQUIREMENTS FOR STATE USE OF CERTAIN**
2 **FUNDS.**

3 (a) STATE PLAN.—To be eligible to receive a pay-
4 ment under section 501(b) a State shall prepare and sub-
5 mit to the Trustees a State plan that—

6 (1) describes the manner in which the State in-
7 tends to use amounts provided under this subsection
8 to conduct anti-tobacco programs consistent with
9 this Act and consistent with the smoking cessation
10 guidelines issued by the Agency for Health Care Pol-
11 icy and Research;

12 (2) describes the specific anti-smoking pro-
13 grams that will be funded by the State;

14 (3) describes the amount of funds that will be
15 used for each program described in paragraph (2);

16 (4) describes the activities to be conducted
17 under such programs, including the populations to
18 be served, the eligibility standards for such popu-
19 lations, if any, and the goals and purposes of such
20 programs;

21 (5) describes the measurable objectives that will
22 be used to evaluate program outcomes;

23 (6) describes the procedures to be used by the
24 State to conduct outreach to potential program par-
25 ticipants;

1 (7) describes the manner in which such pro-
2 grams will be coordinated with other Federal and
3 State anti-smoking initiatives; and

4 (8) has been approved under subsection (b).

5 (b) SUBMISSION, APPROVAL, AND AMENDMENT OF
6 PLAN.—

7 (1) INITIAL PLAN.—

8 (A) IN GENERAL.—As a condition of re-
9 ceiving payment under section 501(b), a State
10 shall submit to the Trustees an anti-smoking
11 program plan that meets the applicable require-
12 ments of this subsection.

13 (B) APPROVAL.—Except as the Trustees
14 may provide under paragraph (5), a State plan
15 submitted under subparagraph (A)—

16 (i) shall be approved for purposes of
17 this section; and

18 (ii) shall be effective beginning with a
19 calendar quarter that is specified in the
20 plan, but in no case earlier than October 1,
21 1998.

22 (2) AMENDMENTS.—

23 (A) IN GENERAL.—A State may amend, in
24 whole or in part, its State anti-smoking plan at

1 any time through transmittal of a plan amend-
2 ment.

3 (B) APPROVAL.—Except as the Trustees
4 may provide under paragraph (5), an amend-
5 ment to a State plan submitted under subpara-
6 graph (A)—

7 (i) shall be approved for purposes of
8 this title, and

9 (ii) shall be effective as provided in
10 subparagraph (C).

11 (C) EFFECTIVE DATES FOR AMEND-
12 MENTS.—An amendment to a State plan shall
13 take effect on one or more effective dates speci-
14 fied in the amendment.

15 (3) DISAPPROVAL.—

16 (A) PROMPT REVIEW OF PLAN SUBMIT-
17 TALS.—The Trustees shall promptly review
18 State plans and plan amendments submitted
19 under this subsection to determine if they sub-
20 stantially comply with the requirements of this
21 section.

22 (B) 90-DAY APPROVAL DEADLINES.—A
23 State plan or plan amendment is considered ap-
24 proved unless the Trustees notifies the State in
25 writing, within 90 days after receipt of the plan

1 or amendment, that the plan or amendment is
2 disapproved (and the reasons for disapproval)
3 or that specified additional information is need-
4 ed.

5 (C) CORRECTION.—In the case of a dis-
6 approval of a plan or plan amendment, the
7 Trustees shall provide a State with a reasonable
8 opportunity for correction before taking finan-
9 cial sanctions against the State on the basis of
10 such disapproval.

11 (4) PROGRAM OPERATION.—

12 (A) IN GENERAL.—The State shall conduct
13 the program in accordance with the plan (and
14 any amendments) approved under paragraph
15 (3) and with the requirements of this section.

16 (B) VIOLATIONS.—The Trustees shall es-
17 tablish a process for enforcing requirements
18 under this section. Such process shall provide
19 for the withholding of funds in the case of sub-
20 stantial noncompliance with such requirements.
21 In the case of an enforcement action against a
22 State under this subparagraph, the Trustees
23 shall provide a State with a reasonable oppor-
24 tunity for correction before taking financial

1 sanctions against the State on the basis of such
2 an action.

3 (5) CONTINUED APPROVAL.—An approved
4 State plan shall continue in effect unless and until
5 the State amends the plan under paragraph (2) or
6 the Trustees finds, under paragraph (4), substantial
7 noncompliance of the plan with the requirements of
8 this section.

9 (c) OBJECTIVES AND GOALS, PLAN ADMINISTRA-
10 TION.—

11 (1) RECORDS, REPORTS, AUDITS, AND EVALUA-
12 TION.—

13 (A) DATA COLLECTION, RECORDS, AND RE-
14 PORTS.—A State plan shall include an assur-
15 ance that the State will collect the data, main-
16 tain the records, and furnish the reports to the
17 Trustees, at the times and in the standardized
18 format the Trustees may require in order to en-
19 able the Trustees to monitor State program ad-
20 ministration and compliance and to evaluate
21 and compare the effectiveness of State plans
22 under this section.

23 (B) STATE ASSESSMENT AND STUDY.—A
24 State plan shall include a description of the
25 State's plan for the annual assessments and re-

ports under subsection (c)(1) and the evaluation required by subsection (c)(2).

(C) AUDITS.—A State plan shall include an assurance that the State will afford the Trustees access to any records or information relating to the plan for the purposes of review or audit.

(2) PROGRAM DEVELOPMENT PROCESS.—A State plan shall include a description of the process used to involve the public in the design and implementation of the plan and the method for ensuring ongoing public involvement.

(3) PROGRAM BUDGET.—A State plan shall include a description of the budget for the plan. The description shall be updated periodically as necessary and shall include details on the planned use of funds and the sources of the non-Federal share of plan expenditures, including any requirements for cost-sharing by beneficiaries.

(d) ANNUAL REPORTS; EVALUATIONS.—

(1) ANNUAL REPORT.—The State shall—

(A) assess the operation of the State plan under this section in each fiscal year, including the progress made in reducing the number of adults and children who use tobacco; and

1 (B) report to the Trustees, by January 1
2 following the end of the fiscal year, on the re-
3 sult of the assessment.

4 (2) STATE EVALUATIONS.—

5 (A) IN GENERAL.—By March 31, 2000,
6 each State that has a State plan shall submit
7 to the Trustees an evaluation that includes each
8 of the following:

9 (i) An assessment of the effectiveness
10 of the State plan in reducing the number
11 of children and adults who use tobacco
12 products.

13 (ii) A description and analysis of the
14 effectiveness of elements of the State plan.

15 (iii) An assessment of the effective-
16 ness of other public and private programs
17 in the State in meeting program goals.

18 (iv) A review and assessment of State
19 activities to coordinate the plan under this
20 section with other public and private anti-
21 tobacco programs.

22 (v) Recommendations for improving
23 the program under this section.

24 (B) REPORT OF THE TRUSTEES.—The
25 Trustees shall submit to Congress and make

1 available to the public by December 31, 2001,
2 a report based on the evaluations submitted by
3 States under subparagraph (A), containing any
4 conclusions and recommendations the Trustees
5 considers appropriate.

6 (e) PROGRAMS.—Anti-tobacco activities may be con-
7 ducted using amounts received under section 501(b) in
8 conjunction with and under the following programs:

9 (1) The special supplemental food program
10 under section 17 of the Child Nutrition Act of 1966
11 (42 U.S.C. 1786).

12 (2) The Maternal and Child Health Services
13 Block Grant program under title V of the Social Se-
14 curity Act (42 U.S.C. 701 et seq.).

15 (3) The State Children’s Health Insurance Pro-
16 gram of the State under title XXI of the Social Se-
17 curity Act (42 U.S.C. 1397aa et seq.).

18 (4) A Head Start program under the Head
19 Start Act (42 U.S.C. 9801 et seq.).

20 (5) The school lunch program under the Na-
21 tional School Lunch Act (42 U.S.C. 1751 et seq.).

22 (6) An Indian Health Service Program.

23 (7) The community health center program
24 under section 330 of the Public Health Service Act
25 (42 U.S.C. 254b).

1 (8) Programs under title X of the Public
2 Health Service Act (42 U.S.C. 300 et seq.).

3 (9) Programs under title XXVI of the Public
4 Health Service Act (42 U.S.C. 300ff-11).

5 (10) State-initiated smoking cessation programs
6 that include provisions for reimbursing individuals
7 for medications or other therapeutic techniques.

8 (11) State-initiated public education campaigns,
9 including multi-media counter-advertising cam-
10 paigns.

11 (12) State-initiated programs for event sponsor-
12 ship transitional assistance, including sponsoring or
13 otherwise supporting athletic, artistic, or other social
14 and cultural events traditionally under the sponsor-
15 ship of, or that received other support from, tobacco
16 product manufacturers or distributors prior to the
17 date of enactment of this Act.

18 (f) APPLICATION OF REQUIREMENTS.—The require-
19 ments of the respective provisions of law described in sub-
20 section (e) shall apply to any funds made available under
21 this section through State programs under any such provi-
22 sion of law to the same extent that such requirements
23 would otherwise apply to such programs under such provi-
24 sions of law.

**Subtitle B—Public Health
Programs**

**SEC. 521. NATIONAL INSTITUTES OF HEALTH TRUST FUND
FOR HEALTH RESEARCH.**

(a) CREATION OF TRUST FUND.—There is established a trust fund to be known as the “National Institutes of Health Trust Fund for Health Research” (referred to in this section as the “Trust Fund”), consisting of such amounts as may be appropriated or transferred to the Trust Fund pursuant to section 101(c)(2) and (3)(D).

(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Trust Fund for each fiscal year an amount equivalent to the amount described in section 101(d)(2)(A) for such fiscal year.

(c) OBLIGATIONS FROM TRUST FUND.—

(1) IN GENERAL.—Subject to the provisions of paragraph (4), with respect to the amounts made available in the Trust Fund in a fiscal year, the Secretary shall distribute during any fiscal year—

(A) 2 percent of such amounts to the Office of the Director of the National Institutes of Health to be allocated at the Director’s discretion—

(i) for carrying out the responsibilities of the Office of the Director, including the

1 Office of Research on Women's Health and
2 the Office of Research on Minority Health,
3 the Office of Alternative Medicine, the Of-
4 fice of Rare Disease Research, the Office
5 of Behavioral and Social Sciences Research
6 (for use for efforts to reduce tobacco use),
7 the Office of Dietary Supplements, and the
8 Office for Disease Prevention; and

9 (ii) for construction and acquisition of
10 equipment for or facilities of or used by
11 the National Institutes of Health;

12 (B) 2 percent of such amounts for transfer
13 to the National Center for Research Resources
14 to carry out section 1502 of the National Insti-
15 tutes of Health Revitalization Act of 1993 con-
16 cerning Biomedical and Behavioral Research
17 Facilities;

18 (C) 1 percent of such amounts for carrying
19 out section 301 and part D of title IV of the
20 Public Health Service Act with respect to
21 health information communications;

22 (D) 10 percent of such amounts for carry-
23 ing out section 414 of the Public Health Service
24 Act with respect to national cancer research
25 and demonstration centers; and

1 (E) the remainder of such amounts to
2 member institutes and centers, including the
3 Office of AIDS Research, of the National Insti-
4 tutes of Health in the same proportion to the
5 total amount received under this section, as the
6 amount of annual appropriations under appro-
7 priations Acts for each member institute and
8 Centers for the fiscal year bears to the total
9 amount of appropriations under appropriations
10 Acts for all member institutes and Centers of
11 the National Institutes of Health for the fiscal
12 year.

13 (2) PLANS OF ALLOCATION.—The amounts
14 transferred under paragraph (1)(E) shall be allo-
15 cated by the Director of the National Institutes of
16 Health or the various directors of the institutes and
17 centers, as the case may be, pursuant to allocation
18 plans developed by the various advisory councils to
19 such directors, after consultation with such
20 directors.

21 (3) GRANTS AND CONTRACTS FULLY FUNDED
22 IN FIRST YEAR.—With respect to any grant or con-
23 tract funded by amounts distributed under para-
24 graph (1), the full amount of the total obligation of
25 such grant or contract shall be funded in the first

1 year of such grant or contract, and shall remain
2 available until expended.

3 (4) TRIGGER AND RELEASE OF MONIES AND
4 PHASE-IN.—

5 (A) TRIGGER AND RELEASE.—No expendi-
6 ture shall be made under paragraph (1) during
7 any fiscal year in which the annual amount ap-
8 propriated for the National Institutes of Health
9 is less than the amount so appropriated for the
10 prior fiscal year.

11 (B) PHASE-IN.—The Secretary of Health
12 and Human Services shall phase-in the distribu-
13 tions required under paragraph (1) so that—

14 (i) 25 percent of the amount in the
15 Trust Fund is distributed in the first fiscal
16 year for which funds are available;

17 (ii) 50 percent of the amount in the
18 Trust Fund is distributed in the second
19 fiscal year for which funds are available;

20 (iii) 75 percent of the amount in the
21 Trust Fund is distributed in the third fis-
22 cal year for which funds are available; and

23 (iv) 100 percent of the amount in the
24 Trust Fund is distributed in the fourth

1 and each succeeding fiscal year for which
2 funds are available.

3 (d) NATIONAL TOBACCO RESEARCH AGENDA.—

4 (1) IN GENERAL.—Not later than 1 year after
5 the date of enactment of this Act, and annually
6 thereafter, the Director of the National Institutes of
7 Health, in collaboration with the Director of the
8 Centers for Disease Control and Prevention, the
9 Commissioner of Food and Drugs, the Administrator
10 of the Substance Abuse and Mental Health Services
11 Administration, and the Director of the Office of
12 National Drug Control Policy, shall prepare and
13 submit to the Secretary and to the appropriate com-
14 mittees of Congress a National Tobacco Research
15 Agenda.

16 (2) CONTENTS.—The Agenda submitted under
17 paragraph (a) shall reflect the research needs in the
18 area of tobacco-related illnesses and diseases and
19 conditions related to other abused substances for the
20 year for which the Agenda is being submitted, with
21 special emphasis on youth tobacco use. The Agenda
22 shall include research concerning—

23 (A) the role of tobacco products in causing
24 cancer, cardiovascular diseases, stroke, and
25 other diseases;

1 (B) genetic and behavioral factors that are
2 related to the use of tobacco or the development
3 of tobacco-related diseases;

4 (C) the development of prevention and
5 treatment modalities with respect to tobacco
6 use and cessation;

7 (D) the development and use of safer and
8 less addictive tobacco products;

9 (E) tobacco-related surveillance and edu-
10 cation, including the effects of counter-advertis-
11 ing;

12 (F) biomedical and behavioral research of
13 the type described in subparagraphs (A)
14 through (E) for other abused substances such
15 as illicit narcotics; and

16 (G) brain development in the early years of
17 life, and the continued physical, intellectual,
18 and social development of children, with empha-
19 sis on how tobacco and other abused substances
20 affect such development.

21 (e) BUDGET TREATMENT OF AMOUNTS IN TRUST
22 FUND.—The amounts in the Trust Fund shall be excluded
23 from, and shall not be taken into account, for purposes
24 of any budget enforcement procedure under the Congres-

1 sional Budget Act of 1974 or the Balanced Budget and
2 Emergency Deficit Control Act of 1985.

3 **SEC. 522. NATIONAL ANTI-TOBACCO PRODUCT CONSUMP-**
4 **TION AND TOBACCO PRODUCT CESSATION**
5 **PUBLIC HEALTH PROGRAM.**

6 (a) **AUTHORITY AND DUTIES.**—Using amounts made
7 available pursuant to section 101(c)(2) and (3)(D), the
8 Secretary shall carry out the following activities:

9 (1) **NATIONAL ANTI-TOBACCO PROGRAM.**—

10 (A) **IN GENERAL.**—The Secretary shall es-
11 tablish and implement a national anti-tobacco
12 product consumption and tobacco product ces-
13 sation program to discourage individuals from
14 beginning to use tobacco products and other
15 substances of abuse and to assist individuals
16 who consume such products to discontinue such
17 use, with special emphasis placed on health pro-
18 motion and disease prevention activities that
19 discourage children under the age of 18 from
20 initiating or continuing use of such products;

21 (B) **REQUIREMENTS.**—In carrying out the
22 program under subparagraph (A), the Secretary
23 shall—

24 (i) to the maximum extent practicable,
25 act in cooperation with State and local

1 public health officials, and private for-prof-
2 it and non-profit entities that carry out
3 anti-tobacco product use and tobacco prod-
4 uct cessation programs; and

5 (ii) to the extent determined appro-
6 priate by the Secretary, coordinate the pro-
7 gram through the Centers for Disease Con-
8 trol and Prevention, Office on Smoking
9 and Health.

10 (2) ADMINISTRATIVE ACTIVITIES.—The Sec-
11 retary shall provide funds for the administration and
12 implementation of the public health and regulatory
13 provisions of this Act (including the amendments
14 made by this Act), including funds for the Centers
15 for Disease Control and Prevention and the Food
16 and Drug Administration.

17 (3) BLOCK GRANTS.—The Secretary shall use
18 not less than 50 percent of the amounts available in
19 each fiscal year under this section to provide block
20 grants to States to carry out activities described in
21 subsection (c).

22 (b) RECOMMENDATIONS.—In developing programs
23 under this section, the Secretary shall consider, as appro-
24 priate, the recommendations of the members of the class

1 certified for purposes of *Dianne Castano v. American To-*
2 *bacco Company*.

3 (c) DIRECT FEDERAL ACTIVITIES.—Under the na-
4 tional anti-tobacco product consumption and tobacco ces-
5 sation program implemented under subsection (a)(1), the
6 Secretary shall carry out the following activities:

7 (1) PUBLIC EDUCATION.—

8 (A) MODEL CURRICULA.—The Secretary,
9 acting through the Director of the Centers for
10 Disease Control and Prevention, shall develop
11 model curricula and other materials designed to
12 educate the public about the health risks associ-
13 ated with tobacco use. Such educational mate-
14 rials shall be specially designed to influence the
15 knowledge, attitudes, and behavior of young
16 Americans.

17 (B) ASSISTANCE BY CDC.—The Director of
18 the Centers for Disease Control and Prevention
19 shall provide technical assistance to State and
20 local public health and education officials and
21 parent-teacher and other civic organizations in
22 developing age effective anti-tobacco educational
23 curricula and other materials.

24 (C) CHRONIC CONSUMERS OF TOBACCO
25 PRODUCTS.—Educational efforts under this

1 paragraph shall include the development of ma-
2 terials that advise members of the public who
3 consume tobacco products of the risks of con-
4 tinuing to use such products and the benefits of
5 discontinuing the use of these products.

6 (D) CESSATION EDUCATION.—The Direc-
7 tor of the Centers for Disease Control and Pre-
8 vention, in consultation with State and local
9 public health officials, shall take appropriate ac-
10 tion to inform consumers of tobacco products
11 about effective therapies for ceasing the con-
12 sumption of tobacco products. Such actions
13 shall be consistent with the tobacco use ces-
14 sation guidelines issued by the Agency for
15 Health Care Policy and Research.

16 (2) COUNTER-ADVERTISING.—The Secretary
17 shall carry out a mass media public education cam-
18 paign designed to counter the effects of marketing
19 practices of tobacco product manufacturers and dis-
20 tributors.

21 (3) MODEL STATE PROGRAM.—The Secretary
22 shall establish a model smoking cessation program
23 that may be used by States in the design of State-
24 based smoking cessation programs. Such model pro-
25 gram shall provide for the provision of grants and

1 other assistance by such States to eligible entities
2 and individuals in the State for the establishment or
3 administration of tobacco product use prevention
4 and cessation programs.

5 (4) OTHER ACTIVITIES.—The Secretary may
6 undertake anti-tobacco product consumption and
7 cessation activities in addition to those specified in
8 paragraphs (1) through (3). Such activities may in-
9 clude enhanced direct Federal programs whose goal
10 is to reduce the use of other abused substances such
11 as illicit drugs.

12 (5) GRANTS AND CONTRACTS.—The Secretary,
13 acting under the authority provided under section
14 301 of the Public Health Service Act (42 U.S.C. 241
15 et seq.), may award grants and contracts under sub-
16 section (a)(1) to public and private entities (includ-
17 ing for-profit entities if determined appropriate by
18 the Secretary) to carry out educational, counter-ad-
19 vertising and other activities described in this sub-
20 section.

21 (d) VOLUNTARY TOBACCO USE PREVENTION AND
22 CESSATION BLOCK GRANTS.—

23 (1) IN GENERAL.—The Secretary shall award
24 block grants to States under subsection (a)(3) to en-
25 able such States to carry out activities for the pur-

pose of planning, implementing, and evaluating tobacco use prevention and cessation activities described in paragraph (4).

(2) ELIGIBILITY.—To be eligible to receive a grant under this section, a State shall certify to the Secretary that such State has in effect and is enforcing a law that contains the provisions described in the model State law described in section 302.

(3) APPLICATION.—

(A) IN GENERAL.—A State that desires to receive a voluntary block grant under subsection (a)(4) shall prepare and submit to the Secretary an application, at such time, in such manner, and accompanied by such information as the Secretary may require.

(B) CONTENTS.—An application submitted under subparagraph (A) shall—

(i) describe the activities that will be carried out using assistance under this subsection; and

(ii) provide such assurances as the Secretary determines to be necessary to carry out this subsection.

(C) JOINT APPLICATION.—The Secretary shall permit a State to submit a joint applica-

1 tion for funds under this subsection and section
2 502.

3 (4) USE OF FUNDS.—A State shall use
4 amounts received under this section to carry out to-
5 bacco abuse activities described in section 502(e).

6 (5) FORMULA.—The amount of a block grant
7 under this subsection shall be determined by the
8 Secretary based on a formula to be developed by the
9 Secretary that takes into consideration the number
10 of children between the ages of 10 and 18 in each
11 State.

12 (6) NONPARTICIPATING STATES.—If a State
13 elects not to participate in the voluntary block grant
14 program under this subsection, the funds allocated
15 to such State will be distributed to participating
16 States in the same ratio as amounts provided to
17 such States under the formula developed under
18 paragraph (5).

19 **TITLE VI—STANDARDS TO RE-**
20 **DUCE INVOLUNTARY EXPO-**
21 **SURE TO TOBACCO SMOKE**

22 **SEC. 601. DEFINITIONS.**

23 In this title—

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Occupational
3 Safety and Health Administration.

4 (2) PUBLIC FACILITY.—

5 (A) IN GENERAL.—The term “public facil-
6 ity” means any building regularly entered by 10
7 or more individuals at least 1 day per week, in-
8 cluding any such building owned by or leased to
9 a Federal, State, or local government entity,
10 and including any building under the control of
11 Congress or an instrumentality of Congress (as
12 such term is defined for purposes of section 509
13 of the Americans with Disabilities Act of 1990
14 (42 U.S.C. 12209). Such term shall not include
15 any building or portion thereof regularly used
16 for residential purposes.

17 (B) EXCLUSIONS.—The term “public facil-
18 ity” does not include a building which is used
19 as a bar, bar area, private club, hotel guest
20 room, casino, bingo parlor, or the facilities of
21 any tobacco product manufacturer or distribu-
22 tor or the facilities of any retailer primarily en-
23 gaged in the business of selling tobacco prod-
24 ucts.

1 (C) BAR.—The term “bar” means any in-
2 door area that is open to the general public and
3 that is devoted to the sale and service of alco-
4 holic beverages for on-premises consumption
5 and where the service of food is only incidental
6 to the consumption of such beverages. Service
7 of food shall be considered incidental if the food
8 service generated less than 50 percent of the
9 total annual gross sales of the establishment.

10 (D) BAR AREA.—The term “bar area”
11 means an area within a restaurant that is de-
12 voted to the sale and service of alcoholic bev-
13 erages for on-premises consumption and where
14 the service of food is only incidental to the con-
15 sumption of such beverages. Service of food
16 shall be considered incidental if the food service
17 generated less than 50 percent of the total an-
18 nual gross sales of the area. Nothing in this
19 title shall be construed to require that a res-
20 taurant to separate the bar area from the re-
21 mainder of the establishment.

22 (3) RESPONSIBLE ENTITY.—The term “respon-
23 sible entity” means, with respect to any public facil-
24 ity, the owner of such facility except that, in the

1 case of any such facility or portion thereof which is
2 leased, such term means the lessee.

3 (4) RESTAURANT.—The term “restaurant”
4 means any indoor area that is open to the general
5 public, or a portion of such area, in which the busi-
6 ness is the sale of food for on-premises consumption
7 and which has an indoor seating capacity of greater
8 than 50 individuals. Such term includes cafeterias,
9 coffee shops, diners, sandwich shops, and short
10 order cafes. Such term shall not include the bar area
11 of any such area.

12 **SEC. 602. SMOKE-FREE ENVIRONMENT POLICY.**

13 (a) POLICY REQUIRED.—In order to protect children
14 and adults from cancer, respiratory disease, heart disease,
15 and other adverse health effects from breathing environ-
16 mental tobacco smoke, the responsible entity for each pub-
17 lic facility shall adopt and implement at such facility a
18 smoke-free environment policy which meets the require-
19 ments of subsection (b) or, in the case of schools or facili-
20 ties serving children, subsection (d).

21 (b) ELEMENTS OF POLICY.—

22 (1) IN GENERAL.—Each smoke-free environ-
23 ment policy for a public facility shall—

24 (A) prohibit the smoking of cigarettes, ci-
25 gars, and pipes, and any other combustion of

1 tobacco within the facility and on facility prop-
2 erty within the immediate vicinity of the en-
3 trance to the facility; and

4 (B) post a clear and prominent notice of
5 the smoking prohibition in appropriate and visi-
6 ble locations at the public facility.

7 (2) EXCEPTION.—

8 (A) IN GENERAL.—Except as provided in
9 subparagraph (B), the smoke-free environment
10 policy for a public facility may provide an ex-
11 ception to the prohibition specified in paragraph
12 (1) for 1 or more specially designated smoking
13 areas within a public facility if such area or
14 areas meet the requirements of subsection (c).

15 (B) LIMITATION.—Subparagraph (A) shall
16 not apply to a public facility that is a res-
17 taurant or prison.

18 (c) SPECIALLY DESIGNATED SMOKING AREAS.—A
19 specially designated smoking area meets the requirements
20 of this subsection if—

21 (1) the area is ventilated in accordance with
22 specifications promulgated by the Administrator that
23 ensure that air from the area is directly exhausted
24 to the outside and does not recirculate or drift to
25 other areas within the public facility;

1 (2) the area is maintained at negative pressure,
2 as compared to adjoined nonsmoking areas, as deter-
3 mined under regulations promulgated by the Admin-
4 istrator; and

5 (3) nonsmoking individuals do not have to enter
6 the area for any purpose while smoking is occurring
7 in such area.

8 Cleaning and maintenance work shall be conducted in such
9 area only while no smoking is occurring in the area.

10 (d) SPECIAL RULES FOR SCHOOLS AND OTHER FA-
11 CILITIES SERVING CHILDREN.—

12 (1) IN GENERAL.—With respect to a facility de-
13 scribed in paragraph (1), the responsible entity for
14 the facility shall adopt and implement at such facil-
15 ity a smoke-free environment policy that—

16 (A) prohibits the smoking of cigarettes, ci-
17 gars, and pipes, and any other combustion of
18 tobacco within the facility and on facility prop-
19 erty;

20 (B) prohibits the use of smokeless tobacco
21 products within the facility and on facility prop-
22 erty; and

23 (C) post a clear and prominent notice of
24 the smoking and smokeless tobacco prohibition

1 in appropriate and visible locations at the public
2 facility.

3 (2) FACILITY.—A facility described in this sub-
4 paragraph is—

5 (A) an elementary or secondary school (as
6 such term is defined in section 14101 of the El-
7 ementary and Secondary Education Act of 1965
8 (20 U.S.C. 8801);

9 (B) any facility at which a Head Start pro-
10 gram or project is being carried out under the
11 Head Start Act (42 U.S.C. 9831 et. seq.); and

12 (C) any facility, other than a home-based
13 facility, at which a licensed or certified child
14 care provider provides child care services.

15 (3) DESIGNATED AREAS.—The smoke-free envi-
16 ronment policy for a facility described in paragraph
17 (2) may provide an exception to the prohibition spec-
18 ified in paragraph (1) for 1 or more specially des-
19 ignated smoking areas within such facility if such
20 area or areas meet the requirements of subsection
21 (c).

22 **SEC. 603. PREEMPTION.**

23 Nothing in this title shall preempt or otherwise affect
24 any other Federal, State or local law which provides pro-
25 tections from health hazards from environmental tobacco

1 smoke that are equal to or greater than the protections
2 provided for under this title.

3 **SEC. 604. REGULATIONS.**

4 Not later than 6 months after the date of enactment
5 of this Act, the Administrator shall promulgate such regu-
6 lations as necessary to carry out this title. Such regula-
7 tions shall delegate to the States a right to enforce the
8 provisions of this title.

9 **SEC. 605. EFFECTIVE DATE.**

10 The provisions of this title shall take effect on the
11 date that is 6 months after the date on which regulations
12 are promulgated under section 604 or 1 year after the
13 date of enactment of this Act, whichever is later.

14 **TITLE VII—PUBLIC DISCLOSURE**
15 **OF HEALTH RESEARCH**

16 **SEC. 701. PURPOSE.**

17 It is the purpose of this title to provide for the disclo-
18 sure of previously nonpublic or confidential documents by
19 manufacturers of tobacco products, including the results
20 of internal health research, and to provide for a procedure
21 to settle claims of attorney-client privilege, work product,
22 or trade secrets with respect to such documents.

23 **SEC. 702. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

24 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—To be eligible to receive the
2 liability protections provided for under subtitle C of
3 title I, manufacturers of tobacco products, acting in
4 conjunction with the Tobacco Institute and the
5 Council for Tobacco Research, U.S.A. (prior to the
6 termination of such entities under section 155), and
7 in accordance with the guidelines and procedures es-
8 tablished under paragraph (2), shall, not later than
9 90 days after the date of enactment of this Act, es-
10 tablish and maintain a National Tobacco Document
11 Depository (in this title referred to as the “Deposi-
12 tory”). Such Depository shall be located in the
13 Washington, D.C. area and be open to the public.

14 (2) GUIDELINES.—The Attorney General, in
15 consultation with the General Services Administra-
16 tion, shall establish guidelines and procedures for
17 the establishment and operation of the Depository,
18 including guidelines for the immediate disclosure of
19 documents relating to health and safety.

20 (b) USE OF DEPOSITORY.—The Depository shall be
21 maintained in a manner that permits the Depository to
22 be used as a resource for litigants, public health groups,
23 and any other individuals who have an interest in the cor-
24 porate records and research of the manufacturers concern-
25 ing smoking and health, addiction or nicotine dependency,

1 safer or less hazardous cigarettes, and underage tobacco
 2 use and marketing.

3 (c) CONTENTS.—The Depository shall include (and
 4 manufacturers and the Tobacco Institute and the Council
 5 for Tobacco Research, U.S.A. shall provide)—

6 (1) within 30 days of the date on which the De-
 7 pository is established, all documents provided by
 8 such entities to plaintiffs in—

9 (A) civil or criminal actions brought by
 10 State attorneys general (including all docu-
 11 ments selected by plaintiffs from the Guilford
 12 Repository of the United Kingdom);

13 (B) Philip Morris Companies Inc.’s defa-
 14 mation action against Capital Cities/American
 15 Broadcasting Company News;

16 (C) the Federal Trade Commission’s inves-
 17 tigation concerning Joe Camel and underage
 18 marketing;

19 (D) *Haines v. Liggett Group, Inc.* (814 F.
 20 Supp. 414 (D.N.J., Jan. 26, 1993)) and
 21 *Cippollone v. Liggett Group, Inc.* (822 F. 2d
 22 335, 56 USLW 2028, 7 Fed. R. Serv. 3d 1438
 23 (3rd Cir. (N.J.), Jun. 8, 1987)); and

24 (E) *Estate of Burl Butler v. Philip Morris,*
 25 *Inc.* (case No. 94–4–53);

1 (2) within 90 days after the date of enactment
2 of this Act, any exiting documents discussing or re-
3 ferring to health research, addiction or dependency,
4 safer or less hazardous cigarettes, studies of the
5 smoking habits of minors, and the relationship be-
6 tween advertising or promotion and youth smoking,
7 that the entities described in subsection (a) have not
8 completed producing as required in the actions de-
9 scribed in paragraph (1);

10 (3) within 30 days of the date on which the De-
11 pository is established, all documents relating to in-
12 dices (as defined by the court in *State of Minnesota*
13 and *Blue Cross and Blue Shield of Minnesota v.*
14 *Philip Morris, Inc., et al.*) of documents relating to
15 smoking and health, including all indices identified
16 by the manufacturers in the *State of Texas v. Amer-*
17 *ican Tobacco Company, et al.*;

18 (4) upon the settlement of any action referred
19 to in this subsection, and after a good-faith, de novo,
20 document-by-document review of all documents pre-
21 viously withheld from production in any actions on
22 the grounds of attorney-client privilege, all docu-
23 ments determined to be outside of the scope of the
24 privilege;

1 (5) all existing or future documents relating to
2 original laboratory research concerning the health or
3 safety of tobacco products, including all laboratory
4 research results relating to methods used to make
5 tobacco products less hazardous to consumers;

6 (6) a comprehensive new attorney-client privi-
7 lege log of all documents, itemized in sufficient de-
8 tail so as to enable any interested individual to de-
9 termine whether the individual will challenge the
10 claim of privilege, that the entities described in sub-
11 section (a) (based on the de novo review of such doc-
12 uments by such entities) claim are protected from
13 disclosure under the attorney-client privilege;

14 (7) all existing or future documents relating to
15 studies of the smoking habits of minors or docu-
16 ments referring to any relationship between advertis-
17 ing and promotion and underage smoking;

18 (8) all original laboratory research conducted or
19 funded, directly or indirectly, by any participating
20 tobacco product manufacturer relating to the health
21 effects or safety of tobacco products, including all
22 original laboratory research relating to any methods
23 or means of making tobacco products less hazardous
24 to consumers;

1 (9) all studies conducted or funded, directly or
2 indirectly, by any participating tobacco product
3 manufacturer, relating to tobacco product use by mi-
4 nors;

5 (10) all documents discussing or referring to
6 the relationship, if any, between advertising and pro-
7 motion and the use of tobacco products by minors;

8 (11) a privilege log describing each document or
9 each portion of a document otherwise subject to pub-
10 lic disclosure under this subsection that any partici-
11 pating tobacco product manufacturer maintains is
12 exempt from the public disclosure provisions of this
13 Act pursuant to subsection (d);

14 (12) a trade secrecy log describing each docu-
15 ment or each document otherwise subject to public
16 disclosure; and

17 (13) all other documents determined appro-
18 priate under regulations promulgated by the Sec-
19 retary.

20 (d) DISPUTE RESOLUTION PANEL.—

21 (1) ESTABLISHMENT.—The Judicial Conference
22 of the United States shall establish a Tobacco Docu-
23 ments Dispute Resolution Panel, to be composed of
24 three Federal judges to be appointed by the Con-
25 ference, to resolve all disputes involving claims of at-

1 torney-client, work product, or trade secrets privilege
 2 with respect to documents required to be deposited
 3 into the Depository under subsection (c) that may be
 4 brought by Federal, State, or local governmental of-
 5 ficials or the public or asserted in any action by a
 6 manufacturer.

7 (2) BASIS FOR DETERMINATIONS.—The deter-
 8 minations of the Panel established under paragraph
 9 (1) shall be based on—

10 (A) the American Bar Association/Amer-
 11 ican Law Institute Model Rules or the prin-
 12 cipals of Federal law with respect to attorney-
 13 client or work product privilege; and

14 (B) the Uniform Trade Secrets Act with
 15 respect to trade secrecy.

16 (3) DECISION.—Any decision of the Panel es-
 17 tablished under paragraph (1) shall be final and
 18 binding upon all Federal and State courts.

19 (4) ASSESSING OF FEES.—As part of a deter-
 20 mination under this subsection, the Panel estab-
 21 lished under paragraph (1) shall determined whether
 22 a claimant of the privilege acted in good faith and
 23 had a factual and legal basis for asserting the claim.
 24 If the Panel determines that the claimant did not
 25 act in good faith, the Panel may assess costs against

1 the claimant, including a reasonable attorneys' fee,
2 and may apply such other sanctions as the Panel de-
3 termines appropriate.

4 (5) ACCELERATED REVIEW.—The Panel estab-
5 lished under paragraph (1) shall establish proce-
6 dures for the accelerated review of challenges to a
7 claim of privilege. Such procedures shall include as-
8 surances that an individual filing a challenge to such
9 a claim need not make a prima facie showing of any
10 kind as a prerequisite to an in camera review of the
11 documents at issue.

12 (6) SPECIAL MASTERS.—The Panel established
13 under paragraph (1) may appoint Special Masters in
14 accordance with Rule 53 of the Federal Rules of
15 Civil Procedure. The cost relating to any Special
16 Master shall be assessed to the manufacturers as
17 part of a fee process to be established under regula-
18 tions promulgated by the Secretary.

19 (e) OTHER PROVISIONS.—

20 (1) NO WAIVER OF PRIVILEGE.—Compliance
21 with this section by the entities described in sub-
22 section (a) shall not be deemed to be a waiver on be-
23 half of such entities of any applicable privilege or
24 protection.

1 (2) AVOIDANCE OF DESTRUCTION.—In estab-
2 lishing the Depository, procedures shall be imple-
3 mented to protect against the destruction of docu-
4 ments.

5 (3) DEEMED PRODUCED.—Any documents con-
6 tained in the Depository shall be deemed to have
7 been produced for purposes of any tobacco-related
8 litigation in the United States.

9 (f) DOCUMENTS.—For purposes of this section, the
10 term “documents” shall include any paper documents that
11 may be printed using data that is contained in computer
12 files.

13 **SEC. 703. ENFORCEMENT.**

14 (a) IN GENERAL.—The Attorney General, acting
15 through the National Tobacco Settlement Trust Fund, or
16 the chief law enforcement officer of a State may bring a
17 proceeding before the dispute resolution panel under sec-
18 tion 802(e) to enforce violations of such section. The panel
19 shall have exclusive jurisdiction over actions to enforce vio-
20 lations of this title.

21 (b) NOTICE.—The person against whom a violation
22 is alleged under subsection (a) shall be given notice of a
23 proceeding before the panel and an opportunity to be
24 heard. Participating tobacco product manufacturers shall
25 have the right to intervene in such proceedings.

1 (c) PENALTIES.—Violations of this subtitle shall give
 2 rise to civil penalty of not to exceed \$15,000 per violation
 3 and \$1,000,000 for all violations adjudicated in a single
 4 proceeding, except that no penalty may be assessed where
 5 the person committing the violation had a good faith fac-
 6 tual and legal basis that the document, portion of a docu-
 7 ment, or portion of an index of document that is the sub-
 8 ject of the alleged violation was exempt from public disclo-
 9 sure under subsections (c) or (d) of section 702.

10 (d) SINGLE VIOLATION.—For purposes of this sec-
 11 tion, a failure to disclose 1 or more portions of a single
 12 document in violation of this title shall be considered to
 13 be part of a single violation.

14 **TITLE VIII—AGRICULTURAL** 15 **TRANSITION PROVISIONS**

16 **SEC. 801. SHORT TITLE.**

17 This title may be cited as the “Tobacco Transition
 18 Act”.

19 **SEC. 802. PURPOSES.**

20 The purposes of this title are—

21 (1) to authorize the use of binding contracts be-
 22 tween the United States and tobacco quota owners
 23 and tobacco producers to compensate them for the
 24 termination of Federal programs that support the
 25 production of tobacco in the United States;

1 (2) to make available to States funds for eco-
2 nomic assistance initiatives in counties of States that
3 are dependent on the production of tobacco; and

4 (3) to terminate Federal programs that support
5 the production of tobacco in the United States.

6 **SEC. 803. DEFINITIONS.**

7 In this title:

8 (1) ASSOCIATION.—The term “association”
9 means a producer-owned cooperative marketing asso-
10 ciation that has entered into a loan agreement with
11 the Commodity Credit Corporation to make price
12 support available to producers.

13 (2) BUYOUT PAYMENT.—The term “buyout
14 payment” means a payment made to a quota owner
15 under section 814 in 1 or more installments in ac-
16 cordance with section 812(c)(1).

17 (3) CONTRACT.—The term “contract” or “to-
18 bacco transition contract” means a contract entered
19 into under section 812.

20 (4) GOVERNOR.—The term “Governor” means
21 the chief executive officer of a State.

22 (5) LEASE.—The term “lease” means a rental
23 of quota on either a cash rent or crop share basis.

24 (6) MARKETING YEAR.—The term “marketing
25 year” means—

1 (A) in the case of Flue-cured tobacco, the
 2 period beginning July 1 and ending the follow-
 3 ing June 30; and

4 (B) in the case of each other kind of to-
 5 bacco, the period beginning October 1 and end-
 6 ing the following September 30.

7 (7) OWNER.—The term “owner” means a per-
 8 son who, at the time of entering into a tobacco tran-
 9 sition contract, owns quota provided by the Sec-
 10 retary.

11 (8) PHASEOUT PERIOD.—The term “phaseout
 12 period” means the 3-year period consisting of the
 13 1999 through 2001 marketing years.

14 (9) PRICE SUPPORT.—The term “price sup-
 15 port” means a nonrecourse loan provided by the
 16 Commodity Credit Corporation through an associa-
 17 tion for the kind of tobacco involved.

18 (10) PRODUCER.—The term “producer” means
 19 a person who during at least 3 of the 1993 through
 20 1997 crops of tobacco (as determined by the Sec-
 21 retary) that were subject to quota—

22 (A) leased quota;

23 (B) shared in the risk of producing a crop
 24 of tobacco; and

25 (C) marketed the tobacco subject to quota.

1 (11) QUOTA.—The term “quota” means the
2 quantity of tobacco produced in the United States,
3 and marketed during a marketing year, that will be
4 used in, or exported from, the United States during
5 the marketing year (including an adjustment for
6 stocks), as estimated by the Secretary.

7 (12) SECRETARY.—The term “Secretary”
8 means the Secretary of Agriculture.

9 (13) STATE.—The term “State” means each of
10 the several States of the United States, the District
11 of Columbia, the Commonwealth of Puerto Rico, and
12 any other territory or possession of the United
13 States.

14 (14) TOBACCO.—The term “tobacco” means
15 any kind of tobacco for which a marketing quota is
16 in effect or for which a marketing quota is not dis-
17 approved by producers.

18 (15) TOBACCO TRANSITION ACCOUNT.—The
19 term “Tobacco Transition Account” means the To-
20 bacco Transition Account established by section
21 811(a).

22 (16) TRANSITION PAYMENT.—The term “tran-
23 sition payment” means a payment made to a pro-
24 ducer under section 815 for each of the 1999
25 through 2001 marketing years.

1 (17) TRUST FUND.—The term “Trust Fund”
 2 means the National Tobacco Settlement Trust Fund
 3 established in the Treasury of the United States
 4 consisting of amounts that are appropriated or cred-
 5 ited to the Trust Fund from the tobacco settlement
 6 approved by Congress.

7 (18) UNITED STATES.—The term “United
 8 States”, when used in a geographical sense, means
 9 all of the States.

10 **Subtitle A—Tobacco Production** 11 **Transition**

12 **CHAPTER 1—TOBACCO TRANSITION**

13 **CONTRACTS**

14 **SEC. 811. TOBACCO TRANSITION ACCOUNT.**

15 (a) ESTABLISHMENT.—There is established a To-
 16 bacco Transition Account into to which amounts shall be
 17 transferred as provided for in section 841.

18 (b) USE.—Funds appropriated or credited to the To-
 19 bacco Transition Account shall be available for providing
 20 buyout payments and transition payments authorized
 21 under this chapter.

22 (c) TERMINATION.—The Tobacco Transition Account
 23 terminates effective September 30, 2001.

1 **SEC. 812. OFFER AND TERMS OF TOBACCO TRANSITION**

2 **CONTRACTS.**

3 (a) OFFER.—The Secretary shall offer to enter into
4 a tobacco transition contract with each owner and pro-
5 ducer of tobacco.

6 (b) TERMS.—Under the terms of a contract, the
7 owner or producer shall agree, in exchange for a payment
8 made pursuant to section 814 or 815, as applicable, to
9 relinquish the value of quota that is owned or leased.

10 (c) RIGHTS OF OWNERS AND PRODUCERS.—

11 (1) OWNERS.—An owner shall receive a buyout
12 payment in 3 equal installments, 1 installment for
13 each of the 1999 through 2001 crops of tobacco, in
14 which case the owner shall have the right to con-
15 tinue production of each of those crops.

16 (2) PRODUCERS.—In the case of each of the
17 1999 through 2001 crops for the kind of tobacco in-
18 volved, a producer who is not an owner during the
19 1998 marketing year for the kind of tobacco in-
20 volved shall not be subject to any restrictions on the
21 quantity of tobacco produced or marketed.

22 **SEC. 813. ELEMENTS OF CONTRACTS.**

23 (a) DEADLINES FOR CONTRACTING.—

24 (1) COMMENCEMENT.—To the maximum extent
25 practicable, the Secretary shall commence entering

1 into contracts under this chapter not later than 90
2 days after the date of enactment of this Act.

3 (2) DEADLINE.—The Secretary may not enter
4 into a contract under this chapter after June 30,
5 1999.

6 (b) DURATION OF CONTRACT.—

7 (1) BEGINNING DATE.—The term of a contract
8 shall begin on the date that is the beginning of the
9 1999 marketing year for the kind of tobacco in-
10 volved.

11 (2) TERMINATION DATE.—The term of a con-
12 tract shall terminate on the date that is the end of
13 the 2001 marketing year for the kind of tobacco in-
14 volved.

15 (c) TIME FOR PAYMENT.—

16 (1) IN GENERAL.—A buyout payment or transi-
17 tion payment shall be made not later than the date
18 that is the beginning of the marketing year for the
19 kind of tobacco involved for each year of the term
20 of a tobacco transition contract of an owner or pro-
21 ducer of tobacco.

22 (2) APPLICABILITY.—This subsection shall be
23 applicable to all payments covered by section 812(c).

1 **SEC. 814. BUYOUT PAYMENTS TO OWNERS.**

2 (a) IN GENERAL.—During the phaseout period, the
3 Secretary shall make buyout payments to owners in ac-
4 cordance with section 812(c)(1).

5 (b) COMPENSATION FOR LOST VALUE.—The pay-
6 ment shall constitute compensation for the lost value to
7 the owner of the quota.

8 (c) PAYMENT CALCULATION.—Under this section,
9 the total amount of the buyout payment made to an owner
10 shall be determined by multiplying—

11 (1) \$8.00; by

12 (2) the average annual quantity of quota owned
13 by the owner during the 1995 through 1997 crop
14 years.

15 **SEC. 815. TRANSITION PAYMENTS TO PRODUCERS.**

16 (a) IN GENERAL.—The Secretary shall make transi-
17 tion payments during each of the 1999 through 2001 mar-
18 keting years for a kind of tobacco that was subject to a
19 quota to a producer who—

20 (1) produced the kind of tobacco during at least
21 3 of the 1993 through 1997 crop years; and

22 (2) entered into a tobacco transition contract.

23 (b) TRANSITION PAYMENTS LIMITED TO LEASED
24 QUOTA.—A producer shall be eligible for transition pay-
25 ments only for the portion of the production of the pro-

1 ducer that is subject to quota that is leased during the
 2 3 crop years described in subsection (a)(1).

3 (c) COMPENSATION FOR LOST REVENUE.—The pay-
 4 ments shall constitute compensation for the lost revenue
 5 incurred by a tobacco producer during each of the 1999
 6 through 2001 marketing years for the kind of tobacco in-
 7 volved.

8 (d) ELECTION BY PRODUCER; PRODUCTION.—

9 (1) ELECTION.—The producer may elect which
 10 3 of the 1993 through 1997 crop years shall be used
 11 for the calculation under subsection (e).

12 (2) PRODUCTION.—The producer shall have the
 13 burden of demonstrating to the Secretary the pro-
 14 duction of tobacco for each year of the election.

15 (e) PAYMENT CALCULATION.—Under this section,
 16 each of the 3 transition payments made to a producer for
 17 the kind of tobacco involved shall be determined by mul-
 18 tipling—

19 (1) 40 cents; by

20 (2) the average quantity of the kind of tobacco
 21 produced by the producer during the 3 crop years
 22 elected by the producer under subsection (d).

23 **SEC. 816. TOBACCO WORKER TRANSITION PROGRAM.**

24 (a) GROUP ELIGIBILITY REQUIREMENTS.—

1 (1) CRITERIA.—A group of workers (including
2 workers in any firm or subdivision of a firm involved
3 in the manufacture, processing, or warehousing of
4 tobacco or tobacco products) shall be certified as eli-
5 gible to apply for adjustment assistance under this
6 section pursuant to a petition filed under subsection
7 (b) if the Secretary of Labor determines that a sig-
8 nificant number or proportion of the workers in such
9 workers' firm or an appropriate subdivision of the
10 firm have become totally or partially separated, or
11 are threatened to become totally or partially sepa-
12 rated, and—

13 (A) the sales or production, or both, of
14 such firm or subdivision have decreased abso-
15 lutely; and

16 (B) the implementation of the national to-
17 bacco settlement contributed importantly to
18 such workers' separation or threat of separation
19 and to the decline in the sales or production of
20 such firm or subdivision.

21 (2) DEFINITION OF CONTRIBUTED IMPOR-
22 TANTLY.—In paragraph (1)(B), the term “contrib-
23 uted importantly” means a cause that is important
24 but not necessarily more important than any other
25 cause.

1 (3) REGULATIONS.—The Secretary shall issue
2 regulations relating to the application of the criteria
3 described in paragraph (1) in making preliminary
4 findings under subsection (b) and determinations
5 under subsection (c).

6 (b) PRELIMINARY FINDINGS AND BASIC ASSIST-
7 ANCE.—

8 (1) FILING OF PETITIONS.—A petition for cer-
9 tification of eligibility to apply for adjustment assist-
10 ance under this section may be filed by a group of
11 workers (including workers in any firm or subdivi-
12 sion of a firm involved in the manufacture, process-
13 ing, or warehousing of tobacco or tobacco products)
14 or by their certified or recognized union or other
15 duly authorized representative with the Governor of
16 the State in which such workers' firm or subdivision
17 thereof is located.

18 (2) FINDINGS AND ASSISTANCE.—Upon receipt
19 of a petition under paragraph (1), the Governor
20 shall—

21 (A) notify the Secretary that the Governor
22 has received the petition;

23 (B) within 10 days after receiving the peti-
24 tion—

1 (i) make a preliminary finding as to
 2 whether the petition meets the criteria de-
 3 scribed in subsection (a)(1); and

4 (ii) transmit the petition, together
 5 with a statement of the finding under
 6 clause (i) and reasons for the finding, to
 7 the Secretary for action under subsection
 8 (c); and

9 (C) if the preliminary finding under sub-
 10 paragraph (B)(i) is affirmative, ensure that
 11 rapid response and basic readjustment services
 12 authorized under other Federal laws are made
 13 available to the workers.

14 (c) REVIEW OF PETITIONS BY SECRETARY; CERTIFI-
 15 CATIONS.—

16 (1) IN GENERAL.—The Secretary, within 30
 17 days after receiving a petition under subsection
 18 (b)(2)(B)(ii), shall determine whether the petition
 19 meets the criteria described in subsection (a)(1).
 20 Upon a determination that the petition meets such
 21 criteria, the Secretary shall issue to workers covered
 22 by the petition a certification of eligibility to apply
 23 for the assistance described in subsection (d).

24 (2) DENIAL OF CERTIFICATION.—Upon the de-
 25 nial of a certification with respect to a petition

1 under paragraph (1), the Secretary shall review the
2 petition in accordance with the requirements of
3 other applicable assistance programs to determine if
4 the workers may be certified under such other provi-
5 sions.

6 (d) COMPREHENSIVE ASSISTANCE.—

7 (1) IN GENERAL.—Workers covered by a certifi-
8 cation issued by the Secretary under subsection
9 (c)(1) shall be provided with benefits and services
10 described in paragraph (2) in the same manner and
11 to the same extent as workers covered under a cer-
12 tification under subchapter A of title II of the Trade
13 Act of 1974 (19 U.S.C. 2271 et seq.), except that
14 the total amount of payments under this section for
15 any fiscal year shall not exceed \$50,000,000.

16 (2) BENEFITS AND SERVICES.—The benefits
17 and services described in this paragraph are the fol-
18 lowing:

19 (A) Employment services of the type de-
20 scribed in section 235 of the Trade Act of 1974
21 (19 U.S.C. 2295).

22 (B) Training described in section 236 of
23 the Trade Act of 1974 (19 U.S.C. 2296), ex-
24 cept that notwithstanding the provisions of sec-
25 tion 236(a)(2)(A) of such Act, the total amount

1 of payments for training under this section for
2 any fiscal year shall not exceed \$25,000,000.

3 (C) Tobacco worker readjustment allow-
4 ances, which shall be provided in the same man-
5 ner as trade readjustment allowances are pro-
6 vided under part I of subchapter B of chapter
7 2 of title II of the Trade Act of 1974 (19
8 U.S.C. 2291 et seq.), except that—

9 (i) the provisions of sections
10 231(a)(5)(C) and 231(c) of such Act (19
11 U.S.C. 2291(a)(5)(C), 2291(c)), authoriz-
12 ing the payment of trade readjustment al-
13 lowances upon a finding that it is not fea-
14 sible or appropriate to approve a training
15 program for a worker, shall not be applica-
16 ble to payment of allowances under this
17 section; and

18 (ii) notwithstanding the provisions of
19 section 233(b) of such Act (19 U.S.C.
20 2293(b)), in order for a worker to qualify
21 for tobacco readjustment allowances under
22 this section, the worker shall be enrolled in
23 a training program approved by the Sec-
24 retary of the type described in section

1 236(a) of such Act (19 U.S.C. 2296(a)) by
2 the later of—

3 (I) the last day of the 16th week
4 of such worker's initial unemployment
5 compensation benefit period; or

6 (II) the last day of the 6th week
7 after the week in which the Secretary
8 issues a certification covering such
9 worker.

10 In cases of extenuating circumstances re-
11 lating to enrollment of a worker in a train-
12 ing program under this section, the Sec-
13 retary may extend the time for enrollment
14 for a period of not to exceed 30 days.

15 (D) Job search allowances of the type de-
16 scribed in section 237 of the Trade Act of 1974
17 (19 U.S.C. 2297).

18 (E) Relocation allowances of the type de-
19 scribed in section 238 of the Trade Act of 1974
20 (19 U.S.C. 2298).

21 (e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAY-
22 MENTS FOR LOST TOBACCO QUOTA.—No benefits or serv-
23 ices may be provided under this section to any individual
24 who has received buyout payments for tobacco quotas
25 under section 812.

1 (f) FUNDING.—Of the amounts in the Account, the
2 Secretary may use not to exceed \$50,000,000 for each of
3 fiscal years 1999 through 2008 to provide assistance
4 under this section.

5 (g) EFFECTIVE DATE.—This section shall take effect
6 on the date that is the later of—

7 (1) October 1, 1998; or

8 (2) the date on which legislation implementing
9 the national tobacco settlement is enacted.

10 (h) TERMINATION DATE.—No assistance, vouchers,
11 allowances, or other payments may be provided under this
12 section after the date that is the earlier of—

13 (1) the date that is 10 years after the effective
14 date of this section under subsection (g); or

15 (2) the date on which legislation establishing a
16 program providing dislocated workers with com-
17 prehensive assistance substantially similar to the as-
18 sistance provided by this section becomes effective.

19 **SEC. 817. FARMER OPPORTUNITY GRANTS.**

20 Part A of title IV of the Higher Education Act of
21 1965 (20 U.S.C. 1070 et seq.) is amended by adding at
22 the end the following:

1 **“Subpart 9—Farmer Opportunity Grants**

2 **“SEC. 420D. STATEMENT OF PURPOSE.**

3 “It is the purpose of this subpart to assist in making
4 available the benefits of postsecondary education to eligi-
5 ble students (determined in accordance with section 420F)
6 in institutions of higher education by providing farmer op-
7 portunity grants to all eligible students.

8 **“SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETER-**
9 **MINATIONS; APPLICATIONS.**

10 “(a) PROGRAM AUTHORITY AND METHOD OF
11 DISTRIBUTION.—

12 “(1) PROGRAM AUTHORITY.—From the To-
13 bacco Transition Account under section 811 of the
14 PROTECT Act, the Secretary, during the period be-
15 ginning July 1, 1999, and ending September 30,
16 2024, shall pay to each eligible institution such sums
17 as may be necessary to pay to each eligible student
18 (determined in accordance with section 420F) for
19 each academic year during which that student is in
20 attendance at an institution of higher education, as
21 an undergraduate, a farmer opportunity grant in the
22 amount for which that student is eligible, as deter-
23 mined pursuant to subsection (b). Not less than 85
24 percent of such sums shall be advanced to eligible
25 institutions prior to the start of each payment period
26 and shall be based upon an amount requested by the

1 institution as needed to pay eligible students, except
2 that this sentence shall not be construed to limit the
3 authority of the Secretary to place an institution on
4 a reimbursement system of payment.

5 “(2) CONSTRUCTION.—Nothing in this section
6 shall be construed to prohibit the Secretary from
7 paying directly to students, in advance of the begin-
8 ning of the academic term, an amount for which the
9 students are eligible, in cases where the eligible in-
10 stitution elects not to participate in the disburse-
11 ment system required by paragraph (1).

12 “(3) DESIGNATION.—Grants made under this
13 subpart shall be known as ‘farmer opportunity
14 grants’.

15 “(4) AMOUNTS.—To carry out this subpart
16 there shall be transferred the following amounts
17 from the Tobacco Transition Account:

18 “(A) \$42,500,000 for each of the academic
19 years 1999–2000 through 2003–2004.

20 “(B) \$50,000,000 for each of the academic
21 years 2004–2005 through 2008–2009.

22 “(C) \$57,500,000 for each of the academic
23 years 2009–2010 through 2013–2014.

24 “(D) \$65,000,000 for each of the academic
25 years 2014–2015 through 2018–2019.

1 “(E) \$72,500,000 for each of the academic
2 years 2019–2020 through 2023–2024.

3 “(b) AMOUNT OF GRANTS.—

4 “(1) AMOUNTS.—

5 “(A) IN GENERAL.—The amount of the
6 grant for a student eligible under this subpart
7 shall be—

8 “(i) \$1,700, or such sum as may be
9 available, for each of the academic years
10 1999–2000 through 2003–2004;

11 “(ii) \$2,000, or such sum as may be
12 available, for each of the academic years
13 2004–2005 through 2008–2009;

14 “(iii) \$2,300, or such sum as may be
15 available, for each of the academic years
16 2009–2010 through 2013–2014;

17 “(iv) \$2,600, or such sum as may be
18 available, for each of the academic years
19 2014–2015 through 2018–2019; and

20 “(v) \$2,900, or such sum as may be
21 available, for each of the academic years
22 2019–2020 through 2023–2024.

23 “(B) PART-TIME RULE.—In any case
24 where a student attends an institution of higher
25 education on less than a full-time basis (includ-

1 ing a student who attends an institution of
2 higher education on less than a half-time basis)
3 during any academic year, the amount of the
4 grant for which that student is eligible shall be
5 reduced in proportion to the degree to which
6 that student is not so attending on a full-time
7 basis, in accordance with a schedule of reduc-
8 tions established by the Secretary for the pur-
9 poses of this subparagraph, computed in ac-
10 cordance with this subpart. Such schedule of re-
11 ductions shall be established by regulation and
12 published in the Federal Register.

13 “(2) MAXIMUM.—No grant or combination of
14 grants under this subpart shall exceed the cost of
15 tuition and fees at the institution at which that stu-
16 dent is in attendance. If, with respect to any stu-
17 dent, it is determined that the amount of a grant ex-
18 ceeds the cost of tuition and fees for that year, the
19 amount of the farmer opportunity grant shall be re-
20 duced to an amount equal to the cost of tuition and
21 fees at such institution.

22 “(3) PROHIBITION.—No grant shall be awarded
23 under this subpart to any individual who is incarcer-
24 ated in any Federal, State, or local penal institution.

25 “(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

1 “(1) IN GENERAL.—The period during which a
2 student may receive grants shall be the period re-
3 quired for the completion of the first undergraduate
4 baccalaureate course of study being pursued by that
5 student at the institution at which the student is in
6 attendance, except that any period during which the
7 student is enrolled in a noncredit or remedial course
8 of study as described in paragraph (2) shall not be
9 counted for the purpose of this paragraph.

10 “(2) CONSTRUCTION.—Nothing in this section
11 shall be construed to—

12 “(A) exclude from eligibility courses of
13 study that are noncredit or remedial in nature
14 and that are determined by the institution to be
15 necessary to help the student be prepared for
16 the pursuit of a first undergraduate bacca-
17 laureate degree or certificate or, in the case of
18 courses in English language instruction, to be
19 necessary to enable the student to utilize al-
20 ready existing knowledge, training, or skills;
21 and

22 “(B) exclude from eligibility programs of
23 study abroad that are approved for credit by
24 the home institution at which the student is
25 enrolled.

1 “(3) PROHIBITION.—No student is entitled to
2 receive farmer opportunity grant payments concur-
3 rently from more than 1 institution or from the Sec-
4 retary and an institution.

5 “(d) APPLICATIONS FOR GRANTS.—

6 “(1) IN GENERAL.—The Secretary shall from
7 time to time set dates by which students shall file
8 applications for grants under this subpart. The filing
9 of applications under this subpart shall be coordi-
10 nated with the filing of applications under section
11 411(d).

12 “(2) INFORMATION AND ASSURANCES.—Each
13 student desiring a grant for any year shall file with
14 the Secretary an application for the grant containing
15 such information and assurances as the Secretary
16 may deem necessary to enable the Secretary to carry
17 out the Secretary’s functions and responsibilities
18 under this subpart.

19 “(e) DISTRIBUTION OF GRANTS TO STUDENTS.—
20 Payments under this section shall be made in accordance
21 with regulations promulgated by the Secretary for such
22 purpose, in such manner as will best accomplish the pur-
23 pose of this section. Any disbursement allowed to be made
24 by crediting the student’s account shall be limited to tui-
25 tion and fees and, in the case of institutionally owned

1 housing, room and board. The student may elect to have
 2 the institution provide other such goods and services by
 3 crediting the student's account.

4 “(f) INSUFFICIENT FUNDING.—If, for any fiscal
 5 year, the funds made available to carry out this subpart
 6 from the Tobacco Community Revitalization Trust Fund
 7 are insufficient to satisfy fully all grants for students de-
 8 termined to be eligible under section 420F, the amount
 9 of the grant provided under subsection (b) shall be re-
 10 duced on a pro rata basis among all eligible students.

11 “(g) TREATMENT OF INSTITUTIONS AND STUDENTS
 12 UNDER OTHER LAWS.—Any institution of higher edu-
 13 cation that enters into an agreement with the Secretary
 14 to disburse to students attending that institution the
 15 amounts those students are eligible to receive under this
 16 subpart shall not be deemed, by virtue of such agreement,
 17 to be a contractor maintaining a system of records to ac-
 18 complish a function of the Secretary. Recipients of farmer
 19 opportunity grants shall not be considered to be individual
 20 grantees for purposes of the Drug-Free Workplace Act of
 21 1988 (41 U.S.C. 701 et seq.).

22 **“SEC. 420F. STUDENT ELIGIBILITY.**

23 “(a) IN GENERAL.—In order to receive any grant
 24 under this subpart, a student shall—

1 “(1) be a member of a tobacco farm family in
2 accordance with subsection (b);

3 “(2) be enrolled or accepted for enrollment in
4 a degree, certificate, or other program (including a
5 program of study abroad approved for credit by the
6 eligible institution at which such student is enrolled)
7 leading to a recognized educational credential at an
8 institution of higher education that is an eligible in-
9 stitution in accordance with section 487, and not be
10 enrolled in an elementary or secondary school;

11 “(3) if the student is presently enrolled at an
12 institution of higher education, be maintaining satis-
13 factory progress in the course of study the student
14 is pursuing in accordance with subsection (c);

15 “(4) not owe a refund on grants previously re-
16 ceived at any institution of higher education under
17 this title, or be in default on any loan from a stu-
18 dent loan fund at any institution provided for in
19 part D, or a loan made, insured, or guaranteed by
20 the Secretary under this title for attendance at any
21 institution;

22 “(5) file with the institution of higher education
23 that the student intends to attend, or is attending,
24 a document, that need not be notarized, but that
25 shall include—

1 “(A) a statement of educational purpose
 2 stating that the money attributable to such
 3 grant will be used solely for expenses related to
 4 attendance or continued attendance at such in-
 5 stitution; and

6 “(B) such student’s social security num-
 7 ber; and

8 “(6) be a citizen of the United States.

9 “(b) TOBACCO FARM FAMILIES.—

10 “(1) IN GENERAL.—For the purpose of sub-
 11 section (a)(1), a student is a member of a tobacco
 12 farm family if during calendar year 1996 the stu-
 13 dent was—

14 “(A) an individual who—

15 “(i) is an active tobacco producer; or

16 “(ii) is otherwise actively engaged in
 17 the production of tobacco;

18 “(B) a spouse, son, daughter, stepson, or
 19 stepdaughter of an individual described in sub-
 20 paragraph (A);

21 “(C) an individual—

22 “(i) who was a brother, sister, step-
 23 brother, stepsister, son-in-law, or daughter-
 24 in-law of an individual described in sub-
 25 paragraph (A); and

1 “(ii) whose principal place of resi-
2 dence was the home of the individual de-
3 scribed in subparagraph (A); or

4 “(D) an individual who was a dependent
5 (within the meaning of section 152 of the Inter-
6 nal Revenue Code of 1986) of an individual de-
7 scribed in subparagraph (A).

8 “(2) ADMINISTRATION.—On request, the Sec-
9 retary of Agriculture shall provide to the Secretary
10 such information as is necessary to carry out this
11 subsection.

12 “(c) SATISFACTORY PROGRESS.—

13 “(1) IN GENERAL.—For the purpose of sub-
14 section (a)(3), a student is maintaining satisfactory
15 progress if—

16 “(A) the institution at which the student is
17 in attendance reviews the progress of the stu-
18 dent at the end of each academic year, or its
19 equivalent, as determined by the institution;
20 and

21 “(B) the student has at least a cumulative
22 C average or its equivalent, or academic stand-
23 ing consistent with the requirements for grad-
24 uation, as determined by the institution, at the
25 end of the second such academic year.

1 “(2) SPECIAL RULE.—Whenever a student fails
2 to meet the eligibility requirements of subsection
3 (a)(3) as a result of the application of this sub-
4 section and subsequent to that failure the student
5 has academic standing consistent with the require-
6 ments for graduation, as determined by the institu-
7 tion, for any grading period, the student may, sub-
8 ject to this subsection, again be eligible under sub-
9 section (a)(3) for a grant under this subpart.

10 “(3) WAIVER.—Any institution of higher edu-
11 cation at which the student is in attendance may
12 waive paragraph (1) or (2) for undue hardship based
13 on—

14 “(A) the death of a relative of the student;

15 “(B) the personal injury or illness of the
16 student; or

17 “(C) special circumstances as determined
18 by the institution.

19 “(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL
20 GRADUATES.—In order for a student who does not have
21 a certificate of graduation from a school providing second-
22 ary education, or the recognized equivalent of such certifi-
23 cate, to be eligible for any assistance under this subpart,
24 the student shall meet either 1 of the following standards:

1 “(1) EXAMINATION.—The student shall take an
2 independently administered examination and shall
3 achieve a score, specified by the Secretary, dem-
4 onstrating that such student can benefit from the
5 education or training being offered. Such examina-
6 tion shall be approved by the Secretary on the basis
7 of compliance with such standards for development,
8 administration, and scoring as the Secretary may
9 prescribe in regulations.

10 “(2) DETERMINATION.—The student shall be
11 determined as having the ability to benefit from the
12 education or training in accordance with such proc-
13 ess as the State shall prescribe. Any such process
14 described or approved by a State for the purposes of
15 this section shall be effective 6 months after the date
16 of submission to the Secretary unless the Secretary
17 disapproves such process. In determining whether to
18 approve or disapprove such process, the Secretary
19 shall take into account the effectiveness of such
20 process in enabling students without secondary
21 school diplomas or the recognized equivalent to bene-
22 fit from the instruction offered by institutions utiliz-
23 ing such process, and shall also take into account
24 the cultural diversity, economic circumstances, and

1 educational preparation of the populations served by
2 the institutions.

3 “(e) SPECIAL RULE FOR CORRESPONDENCE
4 COURSES.—A student shall not be eligible to receive a
5 grant under this subpart for a correspondence course un-
6 less such course is part of a program leading to an associ-
7 ate, bachelor, or graduate degree.

8 “(f) COURSES OFFERED THROUGH TELECOMMUNI-
9 CATIONS.—

10 “(1) RELATION TO CORRESPONDENCE
11 COURSES.—A student enrolled in a course of in-
12 struction at an eligible institution of higher edu-
13 cation (other than an institute or school that meets
14 the definition in section 521(4)(C) of the Carl D.
15 Perkins Vocational and Applied Technology Edu-
16 cation Act (20 U.S.C. 2471(4)(C))) that is offered
17 in whole or in part through telecommunications and
18 leads to a recognized associate, bachelor, or graduate
19 degree conferred by such institution shall not be
20 considered to be enrolled in correspondence courses
21 unless the total amount of telecommunications and
22 correspondence courses at such institution equals or
23 exceeds 50 percent of such courses.

24 “(2) RESTRICTION OR REDUCTIONS OF FINAN-
25 CIAL AID.—A student’s eligibility to receive a grant

1 under this subpart may be reduced if a financial aid
2 officer determines under the discretionary authority
3 provided in section 479A that telecommunications
4 instruction results in a substantially reduced cost of
5 attendance to such student.

6 “(3) DEFINITION.—For the purposes of this
7 subsection, the term ‘telecommunications’ means the
8 use of television, audio, or computer transmission,
9 including open broadcast, closed circuit, cable,
10 microwave, or satellite, audio conferencing, computer
11 conferencing, or video cassettes or discs, except that
12 such term does not include a course that is delivered
13 using video cassette or disc recordings at such insti-
14 tution and that is not delivered in person to other
15 students of that institution.

16 “(g) STUDY ABROAD.—Nothing in this subpart shall
17 be construed to limit or otherwise prohibit access to study
18 abroad programs approved by the home institution at
19 which a student is enrolled. An otherwise eligible student
20 who is engaged in a program of study abroad approved
21 for academic credit by the home institution at which the
22 student is enrolled shall be eligible to receive a grant under
23 this subpart, without regard to whether such study abroad
24 program is required as part of the student’s degree
25 program.

1 “(h) VERIFICATION OF SOCIAL SECURITY NUM-
2 BER.—The Secretary, in cooperation with the Commis-
3 sioner of Social Security, shall verify any social security
4 number provided by a student to an eligible institution
5 under subsection (a)(5)(B) and shall enforce the following
6 conditions:

7 “(1) PENDING VERIFICATION.—Except as pro-
8 vided in paragraphs (2) and (3), an institution shall
9 not deny, reduce, delay, or terminate a student’s eli-
10 gibility for assistance under this subpart because so-
11 cial security number verification is pending.

12 “(2) DENIAL OR TERMINATION.—If there is a
13 determination by the Secretary that the social secu-
14 rity number provided to an eligible institution by a
15 student is incorrect, the institution shall deny or ter-
16 minate the student’s eligibility for any grant under
17 this subpart until such time as the student provides
18 documented evidence of a social security number
19 that is determined by the institution to be correct.

20 “(3) CONSTRUCTION.—Nothing in this sub-
21 section shall be construed to permit the Secretary to
22 take any compliance, disallowance, penalty, or other
23 regulatory action against—

24 “(A) any institution of higher education
25 with respect to any error in a social security

1 number, unless such error was a result of fraud
2 on the part of the institution; or

3 “(B) any student with respect to any error
4 in a social security number, unless such error
5 was a result of fraud on the part of the
6 student.”.

7 **CHAPTER 2—RURAL ECONOMIC**
8 **ASSISTANCE BLOCK GRANTS**

9 **SEC. 821. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.**

10 (a) IN GENERAL.—For each of fiscal years 1999
11 through 2001, the Secretary shall use funds in the To-
12 bacco Transition Account to provide block grants to to-
13 bacco-growing States to assist areas of such a State that
14 are economically dependent on the production of tobacco.

15 (b) FUNDING.—To carry out this section, there shall
16 be credited to the Tobacco Transition Account, from the
17 Trust Fund, \$100,000,000 for each of fiscal years 1999
18 through 2001.

19 (c) PAYMENTS BY SECRETARY TO TOBACCO-GROW-
20 ING STATES.—

21 (1) IN GENERAL.—The Secretary shall use the
22 amount available for a fiscal year under subsection
23 (b) to make block grant payments to the Governors
24 of tobacco-growing States.

1 (2) AMOUNT.—The amount of a block grant
2 paid to a tobacco-growing State shall be based on—

3 (A) the number of counties in the State in
4 which tobacco production is a significant part of
5 the county's economy; and

6 (B) the level of economic dependence of
7 the county on tobacco production.

8 (d) GRANTS BY STATES TO ASSIST TOBACCO-GROW-
9 ING AREAS.—

10 (1) IN GENERAL.—A Governor of a tobacco-
11 growing State shall use the amount of the block
12 grant to the State under subsection (c) to make
13 grants to counties or other public or private entities
14 in the State to assist areas that are dependent on
15 the production of tobacco, as determined by the Gov-
16 ernor.

17 (2) AMOUNT.—The amount of a grant paid to
18 a county or other entity to assist an area shall be
19 based on (as determined by the Secretary)—

20 (A) the ratio of gross tobacco sales receipts
21 in the area to the total farm income in the area;
22 and

23 (B) the ratio of all tobacco related receipts
24 in the area to the total income in the area.

1 (3) USE OF GRANTS.—A county or other entity
 2 that receives a grant under this subsection shall use
 3 the grant in a manner determined appropriate by
 4 the county or entity (with the approval of the State)
 5 to assist producers and other persons who are eco-
 6 nomically dependent on the production of tobacco,
 7 including use for—

8 (A) on-farm diversification and alternatives
 9 to the production of tobacco and risk manage-
 10 ment; and

11 (B) off-farm activities such as development
 12 of non-tobacco related jobs.

13 (e) TERMINATION OF AUTHORITY.—The authority
 14 provided by this section terminates October 1, 2001.

15 **Subtitle B—Tobacco Price Support**
 16 **and Production Adjustment Pro-**
 17 **grams**

18 **CHAPTER 1—TOBACCO PRICE SUPPORT**
 19 **PROGRAM**

20 **SEC. 831. INTERIM REFORM OF TOBACCO PRICE SUPPORT**
 21 **PROGRAM.**

22 (a) PRICE SUPPORT RATES.—Section 106 of the Ag-
 23 ricultural Act of 1949 (7 U.S.C. 1445) is amended—

24 (1) by striking subsection (a) and inserting the
 25 following:

1 “(a) IN GENERAL.—The price support rate for each
2 kind of tobacco for which quotas have been approved shall
3 be reduced by—

4 “(1) for the 1999 crop, 25 percent from the
5 1998 support rate for the kind of tobacco involved;

6 “(2) for the 2000 crop, 10 percent from the
7 1999 support rate for the kind of tobacco involved;
8 and

9 “(3) for the 2001 crop, 10 percent from the
10 2000 support rate for the kind of tobacco involved.”;

11 (2) by striking subsections (b) and (f); and

12 (3) by redesignating subsections (c), (d), and
13 (g) as subsections (b), (c), and (d), respectively.

14 (b) BUDGET DEFICIT ASSESSMENT.—Section 106 of
15 the Agricultural Act of 1949 (7 U.S.C. 1445) (as amended
16 by subsection (a)(3)) is amended by striking subsection
17 (d) and inserting the following:

18 “(d) TOBACCO TRANSITION PAYMENT.—Effective
19 only for the 1998 crop of tobacco, the Secretary of the
20 Treasury shall transfer from the Tobacco Transition Ac-
21 count of the National Tobacco Settlement Trust Fund an
22 amount equal to the product obtained by multiplying—

23 “(1) the amount per pound equal to 2 percent
24 of the national price support level for each kind of

1 tobacco for which price support is made available
2 under this Act; and

3 “(2) the total quantity of the kind of tobacco
4 that is produced or purchased in, or imported into,
5 the United States.”.

6 (c) NO NET COST TOBACCO FUND AND ACCOUNT.—

7 (1) NO NET COST TOBACCO FUND.—Section
8 106A of the Agricultural Act of 1949 (7 U.S.C.
9 1445–1) is amended to read as follows:

10 **“SEC. 106A. NO NET COST TOBACCO FUND.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) ASSOCIATION.—The term ‘association’
13 means a producer-owned cooperative marketing asso-
14 ciation that has entered into a loan agreement with
15 the Corporation to make price support available to
16 producers of a kind of tobacco.

17 “(2) CORPORATION.—The term ‘Corporation’
18 means the Commodity Credit Corporation, an agen-
19 cy and instrumentality of the United States within
20 the Department of Agriculture through which the
21 Secretary makes price support available to produc-
22 ers.

23 “(3) NET GAINS.—The term ‘net gains’ means
24 the amount by which the total proceeds obtained
25 from the sale by an association of a crop of quota

1 tobacco pledged to the Corporation for a price sup-
2 port loan exceeds the principal amount of the price
3 support loan made by the Corporation to the asso-
4 ciation on the crop, plus interest, charges, and costs
5 of administering the price support program.

6 “(4) NO NET COST TOBACCO FUND.—The term
7 ‘No Net Cost Tobacco Fund’ means the capital ac-
8 count established within each association under this
9 section.

10 “(5) PURCHASER.—The term ‘purchaser’
11 means any person who purchases in the United
12 States, either directly or indirectly for the account of
13 the person or another person, Flue-cured or burley
14 quota tobacco.

15 “(6) QUOTA TOBACCO.—The term ‘quota to-
16 bacco’ means any kind of tobacco for which market-
17 ing quotas are in effect or for which marketing
18 quotas are not disapproved by producers.

19 “(7) TRUST FUND.—The term ‘Trust Fund’
20 means the National Tobacco Settlement Trust Fund
21 established in the Treasury of the United States
22 consisting of amounts that are appropriated or cred-
23 ited to the Trust Fund from the tobacco settlement
24 approved by Congress.

1 “(b) PRICE SUPPORT PROGRAM; LOANS.—The Sec-
2 retary—

3 “(1) may carry out the tobacco price support
4 program through the Corporation; and

5 “(2) shall, except as otherwise provided by this
6 section, continue to make price support available to
7 producers through loans to associations that, under
8 agreements with the Corporation, agree to make
9 loan advances to producers.

10 “(c) ESTABLISHMENT OF FUND.—

11 “(1) IN GENERAL.—Each association shall es-
12 tablish within the association a No Net Cost To-
13 bacco Fund.

14 “(2) AMOUNT.—There shall be transferred
15 from the Trust Fund to each No Net Cost Tobacco
16 Fund such amount as the Secretary determines will
17 be adequate to reimburse the Corporation for any
18 net losses that the Corporation may sustain under
19 its loan agreements with the association, based on—

20 “(A) reasonable estimates of the amounts
21 that the Corporation has lent or will lend to the
22 association for price support for the 1982 and
23 subsequent crops of quota tobacco, except that
24 for the 1986 and subsequent crops of burley
25 quota tobacco, the Secretary shall determine the

1 amount of assessments without regard to any
2 net losses that the Corporation may sustain
3 under the loan agreements of the Corporation
4 with the association for the 1983 crop of burley
5 quota tobacco;

6 “(B) the cost of administering the tobacco
7 price support program (as determined by the
8 Secretary); and

9 “(C) the proceeds that will be realized
10 from the sales of tobacco that are pledged to
11 the Corporation by the association as security
12 for loans.

13 “(d) ADMINISTRATION.—The Secretary shall—

14 “(1) require that the No Net Cost Tobacco
15 Fund established by each association be kept and
16 maintained separately from all other accounts of the
17 association and be used exclusively, as prescribed by
18 the Secretary, for the purpose of ensuring, insofar
19 as practicable, that the Corporation, under its loan
20 agreements with the association with respect to
21 1982 and subsequent crops of quota tobacco, will
22 suffer no net losses (including recovery of the
23 amount of loans extended to cover the overhead
24 costs of the association), after any net gains are ap-
25 plied to net losses of the Corporation under para-

graph (3), except that, notwithstanding any other provision of law, the association may, with the approval of the Secretary, use funds in the No Net Cost Tobacco Fund, including interest and other earnings, for—

“(A) the purposes of reducing the association’s outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of quota tobacco and making loan advances to producers as authorized; and

“(B) any other purposes that will be mutually beneficial to producers and purchasers and to the Corporation;

“(2) permit an association to invest the funds in the No Net Cost Tobacco Fund in such manner as the Secretary may approve, and require that the interest or other earnings on the investment shall become a part of the No Net Cost Tobacco Fund;

“(3) require that loan agreements between the Corporation and the association provide that the Corporation shall retain the net gains from each of the 1982 and subsequent crops of tobacco pledged by the association as security for price support loans, and that the net gains will be used for the purpose of—

1 “(A) offsetting any losses sustained by the
2 Corporation under its loan agreements with the
3 association for any of the 1982 and subsequent
4 crops of tobacco; or

5 “(B) reducing the outstanding balance of
6 any price support loan made by the Corporation
7 to the association under the loan agreements
8 for 1982 and subsequent crops of tobacco; and

9 “(4) effective for the 1986 and subsequent
10 crops of quota tobacco, if the Secretary determines
11 that the amount in the No Net Cost Tobacco Fund
12 or the net gains referred to in paragraph (3) exceeds
13 the total amount necessary for the purposes speci-
14 fied in this section, suspend the transfer of amounts
15 from the Trust Fund to the No Net Cost Tobacco
16 Fund under this section.

17 “(e) NONCOMPLIANCE.—

18 “(1) IN GENERAL.—If any association that has
19 entered into a loan agreement with the Corporation
20 with respect to any of the 1982 or subsequent crops
21 of quota tobacco fails or refuses to comply with this
22 section (including regulations promulgated under
23 this section) or the terms of the agreement, the Sec-
24 retary may terminate the agreement or provide that

1 no additional loan funds may be made available
2 under the agreement to the association.

3 “(2) PRICE SUPPORT.—If the Secretary takes
4 action under paragraph (1), the Secretary shall
5 make price support available to producers of the
6 kind or kinds of tobacco, the price of which had been
7 supported through loans to the association, through
8 such other means as are authorized by this Act or
9 the Commodity Credit Corporation Charter Act (15
10 U.S.C. 714 et seq.).

11 “(f) TERMINATION OF AGREEMENT OR ASSOCIA-
12 TION.—If, under subsection (e), a loan agreement with an
13 association is terminated, or if an association having a
14 loan agreement with the Corporation is dissolved, merges
15 with another association, or otherwise ceases to operate,
16 the No Net Cost Tobacco Fund or the net gains referred
17 to in subsection (d)(3) shall be applied or disposed of in
18 such manner as the Secretary may approve or prescribe,
19 except that the net gains shall, to the extent necessary,
20 first be applied or used for the purposes specified in this
21 section.

22 “(g) REGULATIONS.—The Secretary shall issue such
23 regulations as are necessary to carry out this section.”.

1 (2) NO NET COST TOBACCO ACCOUNT.—Section
 2 106B of the Agricultural Act of 1949 (7 U.S.C.
 3 1445–2) is amended to read as follows:

4 **“SEC. 106B. NO NET COST TOBACCO ACCOUNT.**

5 “(a) DEFINITIONS.—In this section:

6 “(1) AREA.—The term ‘area’, when used in
 7 connection with an association, means the general
 8 geographical area in which farms of the producer-
 9 members of the association are located, as deter-
 10 mined by the Secretary.

11 “(2) ASSOCIATION.—The term ‘association’ has
 12 the meaning given the term in section 106A(a)(1).

13 “(3) CORPORATION.—The term ‘Corporation’
 14 has the meaning given the term in section
 15 106A(a)(2).

16 “(4) NET GAINS.—The term ‘net gains’ has the
 17 meaning given the term in section 106A(a)(3).

18 “(5) NO NET COST TOBACCO ACCOUNT.—The
 19 term ‘No Net Cost Tobacco Account’ means an ac-
 20 count established by and in the Corporation for an
 21 association under this section.

22 “(6) PURCHASER.—The term ‘purchaser’ has
 23 the meaning given the term in section 106A(a)(5).

24 “(7) TOBACCO.—The term ‘tobacco’ means any
 25 kind of tobacco (as defined in section 301(b) of the

1 Agricultural Adjustment Act of 1938 (7 U.S.C.
2 1301(b))) for which marketing quotas are in effect
3 or for which marketing quotas are not disapproved
4 by producers.

5 “(8) TRUST FUND.—The term ‘Trust Fund’
6 has the meaning given the term in section
7 106A(a)(7).

8 “(b) PRICE SUPPORT PROGRAM; LOANS.—Notwith-
9 standing section 106A, the Secretary shall, on the request
10 of any association, and may, if the Secretary determines,
11 after consultation with the association, that the accumula-
12 tion of the No Net Cost Tobacco Fund for the association
13 under section 106A is, and is likely to remain, inadequate
14 to reimburse the Corporation for net losses that the Cor-
15 poration sustains under its loan agreements with the asso-
16 ciation—

17 “(1) continue to make price support available to
18 producers through the association in accordance
19 with loan agreements entered into between the Cor-
20 poration and the association; and

21 “(2) establish and maintain in accordance with
22 this section a No Net Cost Tobacco Account for the
23 association in lieu of the No Net Cost Tobacco Fund
24 established within the association under section
25 106A.

1 “(c) ESTABLISHMENT OF ACCOUNT.—

2 “(1) IN GENERAL.—A No Net Cost Tobacco
3 Account established for an association under sub-
4 section (b)(2) shall be established within the Cor-
5 poration.

6 “(2) AMOUNT.—There shall be transferred
7 from the Trust Fund to each No Net Cost Tobacco
8 Account such amount as the Secretary determines
9 will be adequate to reimburse the Corporation for
10 any net losses that the Corporation may sustain
11 under its loan agreements with the association,
12 based on—

13 “(A) reasonable estimates of the amounts
14 that the Corporation has lent or will lend to the
15 association for price support for the 1982 and
16 subsequent crops of quota tobacco, except that
17 for the 1986 and subsequent crops of burley
18 quota tobacco, the Secretary shall determine the
19 amount of assessments without regard to any
20 net losses that the Corporation may sustain
21 under the loan agreements of the Corporation
22 with the association for the 1983 crop of burley
23 quota tobacco;

1 “(B) the cost of administering the tobacco
2 price support program (as determined by the
3 Secretary); and

4 “(C) the proceeds that will be realized
5 from the sales of the kind of tobacco involved
6 that are pledged to the Corporation by the asso-
7 ciation as security for loans.

8 “(3) ADMINISTRATION.—On the establishment
9 of a No Net Cost Tobacco Account for an associa-
10 tion, any amount in the No Net Cost Tobacco Fund
11 established within the association under section
12 106A shall be applied or disposed of in such manner
13 as the Secretary may approve or prescribe, except
14 that the amount shall, to the extent necessary, first
15 be applied or used for the purposes specified in that
16 section.

17 “(d) USE.—Amounts deposited in a No Net Cost To-
18 bacco Account established for an association shall be used
19 by the Secretary for the purpose of ensuring, insofar as
20 practicable, that the Corporation under its loan agree-
21 ments with the association will suffer, with respect to the
22 crop involved, no net losses (including recovery of the
23 amount of loans extended to cover the overhead costs of
24 the association), after any net gains are applied to net
25 losses of the Corporation under subsection (g).

1 “(e) EXCESS AMOUNTS.—If the Secretary determines
2 that the amount in the No Net Cost Tobacco Account or
3 the net gains referred to in subsection (g) exceed the total
4 amount necessary to carry out this section, the Secretary
5 shall suspend the transfer of amounts from the Trust
6 Fund to the No Net Cost Tobacco Account under this sec-
7 tion.

8 “(f) TERMINATION OF AGREEMENT OR ASSOCIA-
9 TION.—In the case of an association for which a No Net
10 Cost Tobacco Account is established under subsection
11 (b)(2), if a loan agreement between the Corporation and
12 the association is terminated, if the association is dissolved
13 or merges with another association that has entered into
14 a loan agreement with the Corporation to make price sup-
15 port available to producers of the kind of tobacco involved,
16 or if the No Net Cost Tobacco Account terminates by op-
17 eration of law, amounts in the No Net Cost Tobacco Ac-
18 count and the net gains referred to in subsection (g) shall
19 be applied to or disposed of in such manner as the Sec-
20 retary may prescribe, except that the net gains shall, to
21 the extent necessary, first be applied to or used for the
22 purposes specified in this section.

23 “(g) NET GAINS.—The provisions of section
24 106A(d)(3) relating to net gains shall apply to any loan
25 agreement between an association and the Corporation en-

1 tered into on or after the establishment of a No Net Cost
 2 Tobacco Account for the association under subsection
 3 (b)(2).

4 “(h) REGULATIONS.—The Secretary shall issue such
 5 regulations as are necessary to carry out this section.”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Section 314(a) of the Agricultural Ad-
 8 justment Act of 1938 (7 U.S.C. 1314(a)) is
 9 amended in the first sentence—

10 (i) by striking “(1)”; and

11 (ii) by striking “, or (2)” and all that
 12 follows through “106B(d)(1) of that Act”.

13 (B) Section 320B(c)(1) of the Agricultural
 14 Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1))
 15 is amended by inserting after “1445–2)” the
 16 following: “(as in effect before the effective date
 17 of the amendments made by section 831(c) of
 18 the Tobacco Transition Act)”.

19 (d) ADMINISTRATIVE COSTS.—Section 1109 of the
 20 Agriculture and Food Act of 1981 (Public Law 97–98;
 21 7 U.S.C. 1445 note) is repealed.

22 (e) CROPS.—This section and the amendments made
 23 by this section shall apply with respect to the 1999 and
 24 subsequent crops of the kind of tobacco involved.

1 **SEC. 832. TERMINATION OF TOBACCO PRICE SUPPORT**
2 **PROGRAM.**

3 (a) PARITY PRICE SUPPORT.—Section 101 of the Ag-
4 ricultural Act of 1949 (7 U.S.C. 1441) is amended—

5 (1) in the first sentence of subsection (a), by
6 striking “tobacco (except as otherwise provided here-
7 in), corn,” and inserting “corn”;

8 (2) by striking subsections (c), (g), (h), and (i);

9 (3) in subsection (d)(3)—

10 (A) by striking “, except tobacco,”; and

11 (B) by striking “and no price support shall
12 be made available for any crop of tobacco for
13 which marketing quotas have been disapproved
14 by producers;”; and

15 (4) by redesignating subsections (d) and (e) as
16 subsections (c) and (d), respectively.

17 (b) TERMINATION OF TOBACCO PRICE SUPPORT AND
18 NO NET COST PROVISIONS.—Sections 106, 106A, and
19 106B of the Agricultural Act of 1949 (7 U.S.C. 1445,
20 1445–1, 1445–2) are repealed.

21 (c) DEFINITION OF BASIC AGRICULTURAL COMMOD-
22 ITY.—Section 408(c) of the Agricultural Act of 1949 (7
23 U.S.C. 1428(c)) is amended by striking “tobacco,”.

24 (d) REVIEW OF BURLEY TOBACCO IMPORTS.—Sec-
25 tion 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

1 (e) POWERS OF COMMODITY CREDIT CORPORA-
2 TION.—Section 5 of the Commodity Credit Corporation
3 Charter Act (15 U.S.C. 714c) is amended by inserting
4 “(other than tobacco)” after “agricultural commodities”
5 each place it appears.

6 (f) TRANSITION PROVISIONS.—

7 (1) LIABILITY.—The amendments made by this
8 section shall not affect the liability of any person
9 under any provision of law as in effect before the ef-
10 fective date of this section.

11 (2) TOBACCO STOCKS AND LOANS.—The Sec-
12 retary shall issue regulations that require—

13 (A) the orderly disposition of tobacco
14 stocks; and

15 (B) the repayment of all tobacco price sup-
16 port loans by not later than 1 year after the ef-
17 fective date of this section.

18 (g) CROPS.—This section and the amendments made
19 by this section shall apply with respect to the 2002 and
20 subsequent crops of the kind of tobacco involved.

**CHAPTER 2—TOBACCO PRODUCTION
ADJUSTMENT PROGRAMS**

**SEC. 835. TERMINATION OF TOBACCO PRODUCTION AD-
JUSTMENT PROGRAMS.**

(a) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking “tobacco,”.

(b) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking “tobacco,”;

(3) in paragraph (7), by striking the following:

“tobacco (flue-cured), July 1–June 30;

“tobacco (other than flue-cured), October 1–September 30;”;

(4) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking “and tobacco”;

1 (6) in paragraph (12), by striking “tobacco,”;

2 (7) in paragraph (14)—

3 (A) in subparagraph (A), by striking

4 “(A)”; and

5 (B) by striking subparagraphs (B), (C),

6 and (D);

7 (8) by striking paragraph (15);

8 (9) in paragraph (16)—

9 (A) by striking subparagraph (B); and

10 (B) by redesignating subparagraph (C) as

11 subparagraph (B); and

12 (10) by redesignating paragraphs (16) and (17)

13 as paragraphs (15) and (16), respectively.

14 (c) PARITY PAYMENTS.—Section 303 of the Agricul-

15 tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended

16 in the first sentence by striking “rice, or tobacco,” and

17 inserting “or rice,”.

18 (d) MARKETING QUOTAS.—Part I of subtitle B of

19 title III of the Agricultural Adjustment Act of 1938 (7

20 U.S.C. 1311 et seq.) is repealed.

21 (e) ADMINISTRATIVE PROVISIONS.—Section 361 of

22 the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)

23 is amended by striking “tobacco,”.

1 (f) ADJUSTMENT OF QUOTAS.—Section 371 of the
2 Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is
3 amended—

4 (1) in the first sentence of subsection (a), by
5 striking “peanuts, or tobacco” and inserting “or
6 peanuts”; and

7 (2) in the first sentence of subsection (b), by
8 striking “peanuts or tobacco” and inserting “or pea-
9 nuts”.

10 (g) REPORTS AND RECORDS.—Section 373 of the Ag-
11 ricultural Adjustment Act of 1938 (7 U.S.C. 1373) is
12 amended—

13 (1) by striking “peanuts, or tobacco” each place
14 it appears in subsections (a) and (b) and inserting
15 “or peanuts”; and

16 (2) in subsection (a)—

17 (A) in the first sentence, by striking “all
18 persons engaged in the business of redrying,
19 prizing, or stemming tobacco for producers,”;
20 and

21 (B) in the last sentence, by striking
22 “\$500;” and all that follows through the period
23 at the end of the sentence and inserting
24 “\$500.”.

1 (h) REGULATIONS.—Section 375(a) of the Agricul-
 2 tural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is
 3 amended by striking “peanuts, or tobacco” and inserting
 4 “or peanuts”.

5 (i) EMINENT DOMAIN.—Section 378 of the Agricul-
 6 tural Adjustment Act of 1938 (7 U.S.C. 1378) is amend-
 7 ed—

8 (1) in the first sentence of subsection (c), by
 9 striking “cotton, tobacco, and peanuts” and insert-
 10 ing “cotton and peanuts”; and

11 (2) by striking subsections (d), (e), and (f).

12 (j) BURLEY TOBACCO FARM RECONSTITUTION.—
 13 Section 379 of the Agricultural Adjustment Act of 1938
 14 (7 U.S.C. 1379) is amended—

15 (1) in subsection (a)—

16 (A) by striking “(a)”; and

17 (B) in paragraph (6), by striking “, but
 18 this clause (6) shall not be applicable in the
 19 case of burley tobacco”; and

20 (2) by striking subsections (b) and (c).

21 (k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the
 22 Act entitled “An Act to amend the Agricultural Adjust-
 23 ment Act of 1938, as amended, to provide for acreage-
 24 poundage marketing quotas for tobacco, to amend the to-
 25 bacco price support provisions of the Agricultural Act of

1 1949, as amended, and for other purposes”, approved
2 April 16, 1965 (Public Law 89–12; 7 U.S.C. 1314c note),
3 is repealed.

4 (l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The
5 Act entitled “An Act relating to burley tobacco farm acre-
6 age allotments under the Agricultural Adjustment Act of
7 1938, as amended”, approved July 12, 1952 (7 U.S.C.
8 1315), is repealed.

9 (m) TRANSFER OF ALLOTMENTS.—Section 703 of
10 the Food and Agriculture Act of 1965 (7 U.S.C. 1316)
11 is repealed.

12 (n) ADVANCE RECOURSE LOANS.—Section
13 13(a)(2)(B) of the Food Security Improvements Act of
14 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking
15 “tobacco and”.

16 (o) TOBACCO FIELD MEASUREMENT.—Section 1112
17 of the Omnibus Budget Reconciliation Act of 1987 (Public
18 Law 100–203) is amended by striking subsection (c).

19 (p) LIABILITY.—The amendments made by this sec-
20 tion shall not affect the liability of any person under any
21 provision of law as in effect before the effective date under
22 subsection (q).

23 (q) CROPS.—This section and the amendments made
24 by this section shall apply with respect to the 1999 and
25 subsequent crops of the kind of tobacco involved.

Subtitle C—Funding

SEC. 841. TRUST FUND.

(a) REQUEST.—The Secretary of Agriculture shall request the Trustees to transfer to the Tobacco Transition Account, amounts authorized or necessary under sections 814, 815, 816, 817, and 821, and the amendments made by section 831, to the account of the Commodity Credit Corporation.

(b) TRANSFER.—On receipt of such a request, the Trustees shall transfer amounts requested under subsection (a).

(c) USE.—The Secretary of Agriculture shall use the amounts transferred under subsection (b) to carry out the activities described in subsection (a).

(d) TERMINATION OF AUTHORITY.—The authority provided under this section shall expire on September 30, 2001.

SEC. 842. COMMODITY CREDIT CORPORATION.

The Secretary may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this title and the amendments made by this title.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. PROVISIONS RELATING TO NATIVE AMERICANS.

(a) INDIAN COUNTRY.—

1 (1) IN GENERAL.—The provisions of this Act
2 (or an amendment made by this Act) shall apply to
3 the manufacture, distribution, and sale of tobacco
4 products within Indian country.

5 (2) DEFINITION.—As used in this section, the
6 term “Indian country” has the meaning given such
7 term in section 1151 of title 18, United States Code.

8 (b) INDIAN TRIBES.—

9 (1) IN GENERAL.—To the extent that an Indian
10 tribe or tribal organization engages in the manufac-
11 ture, distribution, or sale of tobacco products, the
12 provisions of this Act (or an amendment made by
13 this Act) shall apply to such tribe or organization.

14 (2) RELIGIOUS PRACTICE EXCEPTION.—In rec-
15 ognition of the religious and ceremonial uses of to-
16 bacco and tobacco products by many Indian tribes
17 and the members of such tribes, nothing in this Act
18 (or and amendment made by this Act) shall be con-
19 strued to infringe upon the rights of such tribes or
20 members to transfer, acquire, possess, or use any to-
21 bacco or tobacco products for such purposes. The
22 preceding sentence shall only be construed to apply
23 to those quantities of tobacco products necessary to
24 fulfill recognized religious or ceremonial purposes
25 and not to permit the general marketing of tobacco

1 products not in compliance with chapter IX of the
2 Federal Food, Drug and Cosmetic Act.

3 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe
4 or tribal organization that engages in the manufacturer
5 of tobacco products shall be subject to liability for fee pay-
6 ments under section 102, or shall be considered a non-
7 participating manufacturer and shall be subject to sur-
8 charges under subtitle B of title III.

9 (d) APPLICATION OF FEDERAL FOOD, DRUG AND
10 COSMETIC ACT REQUIREMENTS.—

11 (1) IN GENERAL.—The Secretary, in consulta-
12 tion with the Secretary of the Interior, shall promul-
13 gate regulations to provide for the waiver of any re-
14 quirements of the Food, Drug and Cosmetic Act
15 with respect to tobacco products manufactured, dis-
16 tributed, or sold within Indian country as appro-
17 priate to comply with subsection (b)(1).

18 (2) ELIGIBILITY FOR ASSISTANCE.—Under the
19 regulations promulgated under paragraph (1), the
20 Secretary, after consultation with the Secretary of
21 the Interior, may provide assistance to an Indian
22 tribe or tribal organization in meeting and enforcing
23 the requirements under such regulations if—

24 (A) the tribe or organization has a govern-
25 ing body that has powers and carries out duties

1 that are similar to the powers and duties of
2 State or local governments;

3 (B) the functions to be exercised through
4 the use of such assistance relate to activities
5 within the exterior boundaries of the reservation
6 or other areas within the jurisdiction of the
7 tribe involved; and

8 (C) the tribe or organization is reasonably
9 expected to be capable of carrying out the func-
10 tions required by the Secretary.

11 (3) DETERMINATIONS.—The Secretary shall
12 make determinations concerning the eligibility of an
13 Indian tribe or tribal organization for assistance
14 under regulations under paragraph (1) not later
15 than 90 days after the date on which such tribe or
16 organization submits an application for such assist-
17 ance.

18 (e) RETAIL LICENSING REQUIREMENTS.—

19 (1) IN GENERAL.—The requirements of subtitle
20 C of title I shall apply to retailers that sell tobacco
21 products within Indian country.

22 (2) SELF-REGULATION.—Not later than 6
23 months after the date of enactment of this Act, the
24 Secretary shall promulgate regulations to permit the
25 Indian tribe or tribal organization to implement a

1 tribal licensing program within the exterior bound-
2 aries of the reservation or other areas within the ju-
3 risdiction of the tribe.

4 (3) IMPLEMENTATION BY SECRETARY.—If the
5 Secretary determines that the Indian tribe or tribal
6 organization is not qualified to administer the re-
7 quirements of subtitle C of title I, the Secretary, in
8 consultation with the Secretary of the Interior, shall
9 implement such requirements on behalf of the tribe
10 or organization.

11 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

12 (1) IN GENERAL.—For each fiscal year the Sec-
13 retary shall pay to each Indian tribe that has an ap-
14 proved tribal anti-smoking plan a tribal grant for
15 the fiscal year in an amount equal to the amount de-
16 termined under paragraph (2), and shall reduce the
17 amounts payable under section 501 to any State in
18 which the service area or areas of the Indian tribe
19 are located by the amount so determined.

20 (2) AMOUNT DETERMINED.—The amount of
21 any funds for which an Indian tribe is eligible under
22 paragraph (1) shall be determined by the Secretary
23 based on the proportion of the total number of Indi-
24 ans residing on such tribe's reservation in the State
25 as compared to the total population of the State and

1 the amount allocated to Indian tribes under section
2 501.

3 (3) USE.—Amounts provided to a tribe or orga-
4 nization under this paragraph shall be used to fur-
5 ther the purposes of this Act and in accordance with
6 a plan submitted by the tribe or organization and
7 approved by the Secretary as being in compliance
8 with this Act. Tribes and tribal organizations shall
9 have the flexibility to utilize such amounts to meet
10 the unique health needs of such tribes within the
11 context of tribal health programs if such programs
12 meet the fundamental Federal requirements under
13 this Act as determined by the Secretary.

14 (4) REALLOTMENT.—Any amounts set-aside
15 and not expended under this paragraph shall be re-
16 allotted among other eligible tribes and organiza-
17 tions.

18 (g) OBLIGATION OF MANUFACTURERS.—A partici-
19 pating manufacturer shall not engage in any activity with-
20 in Indian country that is prohibited under the Protocol.

21 (h) INDIAN HEALTH SERVICE.—Amounts made
22 available under section 101(c)(3)(F) shall be provided to
23 the Indian Health Service to be used for anti-tobacco-re-
24 lated consumption and cessation activities including—

1 (1) clinic and facility design, construction, re-
2 pair, renovation, maintenance and improvement;

3 (2) provider services and equipment;

4 (3) domestic and community sanitation associ-
5 ated with clinic and facility construction and im-
6 provement;

7 (4) inpatient and outpatient services; and

8 (5) other programs and services provided
9 through the Indian Health Service or through tribal
10 contracts, compacts, grants or cooperative agree-
11 ments with the Indian Health Service and which are
12 deemed appropriate to raising the health status of
13 Indians.

14 (i) PREEMPTION.—

15 (1) GENERAL PREEMPTION.—Except as other-
16 wise provided for in this section, nothing in this Act
17 shall be construed as prohibiting an Indian tribe or
18 tribal organization from imposing requirements, pro-
19 hibitions, penalties or other measures to further the
20 purposes of this Act that are in addition to the re-
21 quirements, prohibitions, or penalties required under
22 this Act.

23 (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in
24 title VI shall be construed to preempt or otherwise
25 affect any Indian tribe or tribal organization rule or

1 practice that provides greater protection from the
2 health hazards of environmental tobacco smoke.

3 (3) NATIVE AMERICANS.—Except as provided
4 in this section, a State may not impose obligations
5 or requirements relating to the application of this
6 Act to Indian tribes and tribal organizations.

7 **SEC. 902. WHISTLEBLOWER PROTECTIONS.**

8 (a) PROHIBITION OF REPRISALS.—An employee of
9 any manufacturer, distributor, or retailer of a tobacco
10 product may not be discharged, demoted, or otherwise dis-
11 criminated against (with respect to compensation, terms,
12 conditions, or privileges of employment) as a reprisal for
13 disclosing to an employee of the Food and Drug Adminis-
14 tration, the Department of Justice, or any State or local
15 regulatory or enforcement authority, information relating
16 to a substantial violation of law related to this Act (or
17 an amendment made by this Act) or a State or local law
18 enacted to further the purposes of this Act.

19 (b) ENFORCEMENT.—Any employee or former em-
20 ployee who believes that such employee has been dis-
21 charged, demoted, or otherwise discriminated against in
22 violation of subsection (a) may file a civil action in the
23 appropriate United States district court before the end of
24 the 2-year period beginning on the date of such discharge,
25 demotion, or discrimination.

1 (c) REMEDIES.—If the district court determines that
2 a violation has occurred, the court may order the manufac-
3 turer, distributor, or retailer involved to—

4 (1) reinstate the employee to the employee’s
5 former position;

6 (2) pay compensatory damages; or

7 (3) take other appropriate actions to remedy
8 any past discrimination.

9 (d) LIMITATION.—The protections of this section
10 shall not apply to any employee who—

11 (1) deliberately causes or participates in the al-
12 leged violation of law or regulation; or

13 (2) knowingly or recklessly provides substan-
14 tially false information to the Food and Drug Ad-
15 ministration, the Department of Justice, or any
16 other Federal, State or local regulatory or enforce-
17 ment authority.

18 **SEC. 903. LIMITED ANTITRUST EXEMPTION.**

19 (a) IN GENERAL.—The Federal antitrust laws, and
20 any similar laws of any State, shall not apply to any joint
21 discussion, consideration, review, action or agreement by
22 or among any participating manufacturers, or any individ-
23 uals acting on behalf of any participating manufacturers,
24 for the purposes of, and limited to—

1 (1) entering into the Protocol under section 201
2 or a consent decree under section 241;

3 (2) refusing to deal with a distributor, retailer,
4 or other seller of tobacco products who distributes
5 such products for sale to, or offers for sale or sells
6 such products to, underage individuals, or who oth-
7 erwise fails to comply with applicable requirements
8 of this Act, the Protocol or a consent decree; or

9 (3) submitting an application relating to, enter-
10 ing into, or complying with or otherwise carrying out
11 the terms of any plan or program that has been ap-
12 proved under subsection (b).

13 (b) PROGRAMS FOR REDUCTIONS IN UNDERAGE
14 USE.—

15 (1) IN GENERAL.—The Attorney General may
16 approve, upon the application of 1 or more partici-
17 pating manufacturers, a plan or program to reduce
18 the use of tobacco products by underage individuals.

19 (2) DETERMINATION.—Not later than 90 days
20 after the date on which a plan or program is re-
21 ceived under paragraph (1), the Attorney General
22 shall approve or disapprove such plan or program.
23 In determining whether to approve a plan or pro-
24 gram under paragraph (1), the Secretary shall con-
25 sider whether the plan or program is appropriate as

1 part of the effort to reduce the use of tobacco prod-
2 ucts by underage individuals and will not have the
3 effect of unduly restraining competition.

4 (3) WITHDRAWING OF APPROVAL.—Subsection
5 (a)(3) shall not apply with respect to any plan or
6 program that has not been approved by the Attorney
7 General or that has had such an approval subse-
8 quently withdrawn.

9 **SEC. 904. PASS-THROUGH.**

10 Nothing in this Act shall be construed as prohibiting
11 a manufacturer from passing the costs of the amount of
12 any payments, including surcharges, assessed under this
13 Act on to consumers of tobacco products as a further eco-
14 nomic deterrent to the use of such products.

15 **SEC. 905. EFFECTIVE DATE.**

16 This Act shall become effective on the date of enact-
17 ment of this Act.

